

EXHIBIT 15

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

-vs-

BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC,

Defendant.

08-01789 (SMB)

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In re:

BERNARD L. MADOFF,

Debtor.

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VIDEOTAPED DEPOSITION

OF

BERNARD L. MADOFF

(Taken by the Customers)

Butner, North Carolina

December 20, 2016

Reported by: Lisa A. DeGroat, RPR
Notary Public

<p style="text-align: right;">Page 14</p> <p>1 achieved the results I believed they expected." 2 Is that statement 100 percent true? 3 A. Yes. However, there's -- if I understand 4 this statement, it said that -- that -- "to falsely 5 give the appearance," implies that I had achieved the 6 results. When I took the money and I started the 7 strategy, the strategy -- there was nothing in the 8 strategy to give a false impression. 9 In other words, I was the -- you know, I 10 intended to invest the money. The fact that I 11 invested -- that I couldn't invest it because of 12 market conditions, but then shorted the strategy to 13 the clients, then it was -- it -- it gave the false 14 impression, but that -- it was not my intention when I 15 first developed the strategy or made the commitments 16 to the clients to -- to not invest the money at that 17 time. 18 Q. Okay. So, if I understand you correctly, 19 when you developed the split-strike conversion 20 strategy, your intention was to carry it out -- 21 A. Correct. 22 Q. -- honestly? 23 A. Correct. 24 Q. But you didn't have the money to do that, 25 and so you --</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. SHEEHAN: You're testifying. 2 MS. CHAITMAN: Okay. Okay. 3 MR. SHEEHAN: All right. 4 BY MS. CHAITMAN: 5 Q. Mr. Madoff, can you tell us in your own 6 words whether you had ever -- prior to the 7 split-strike conversion strategy ever misrepresented a 8 purchase or a sale on a customer's statement so that 9 the customer was misled? 10 A. Yes. 11 Q. When? 12 A. Well, basically after the market crashed in 13 1987, certain customers that were not doing the 14 split-strike conversion strategy, but were involved in 15 a -- in a normal market-hedging strategy, where there 16 were commitments on both my side and the client's side 17 to keep the strategy open, and -- because of the 18 market crash they were forcing me to liquidate part of 19 their -- their strategy in violation of a commitment 20 that -- that they had made to me and to others. 21 That was done, and that triggered in the 22 years after that, which I guess started primarily -- 23 that went really from the early '90s on through, you 24 know, 2008, where those clients gave instructions to 25 do some backdating of transactions, and, you know,</p>
<p style="text-align: right;">Page 15</p> <p>1 A. I didn't have the market conditions to do 2 that. 3 Q. Okay. So you started sending statements to 4 clients which were not accurate, because they 5 reflected purchases of securities that did not occur? 6 A. Yes. That's correct. 7 Q. Okay. Now, you understood that this was a 8 fraud on your customers; right? 9 A. Yes. 10 Q. And is it your testimony that you never 11 perpetrated a fraud on your customers prior to the 12 initiation of the split-strike conversion strategy? 13 A. That's correct. 14 MR. SHEEHAN: Object -- object to the 15 form. 16 THE WITNESS: I'm sorry. I didn't hear 17 what you just -- 18 MR. SHEEHAN: I said I objected to the 19 form. 20 THE WITNESS: Oh. 21 MR. SHEEHAN: We have an understanding 22 that all objections are preserved, as subject to 23 objections as to form. 24 MS. CHAITMAN: Right, but what is your 25 objection to that form? I just want to --</p>	<p style="text-align: right;">Page 17</p> <p>1 liquidating of securities or -- and so on to generate 2 certain losses that they deemed desirable for tax 3 purposes. 4 So I was aware of the fact that those -- 5 and, you know -- and told the clients that they were, 6 you know, basically, you know, running into a tax 7 violation problem. So that had nothing to do with the 8 split-strike conversion, and that was -- 9 I don't know if I've answered your question. 10 Q. Okay. Well, we've gone into a different 11 subject, but let me, if I may, just come back to my 12 question, and perhaps I misstated it. 13 What I was really asking you -- I'm not 14 asking you whether a client directed you to do 15 something illegal. 16 A. Right. 17 Q. Because that would not be a fraud on that 18 client; right? 19 A. No. 20 Q. Yeah. 21 A. That's correct. 22 Q. Okay. So I want you to limit -- 23 A. It was a violation for probably the SEC 24 regulations on my part, but it was not a fraud. It 25 was -- it was the clients that, you know, instructed</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 what should be done to employees in my firm. 2 Q. Okay. 3 A. My employees in my firm. 4 Q. Okay. We'll come back to that, but I want 5 you to focus now solely on the situation where you are 6 making a misrepresentation to a client and the client 7 doesn't know the truth. 8 A. Okay. 9 Q. Prior to the split-strike conversion 10 strategy did you ever orally or in writing make a 11 misrepresentation to the client where the client 12 didn't know the truth? 13 A. No. 14 Q. Are you absolutely sure about that? 15 A. Yes. 16 Q. Now, to the best of your recollection do you 17 remember when in 1992 you started to do the 18 split-strike conversion strategy? 19 MR. SHEEHAN: Object to the form. 20 THE WITNESS: No. I would just say it 21 was the early part of '92. 22 BY MS. CHAITMAN: 23 Q. Okay. But we can look at statements, and we 24 would be -- 25 A. Yeah.</p>	<p style="text-align: right;">Page 20</p> <p>1 It was actually -- this started during the 2 Gulf War situation. I don't remember the exact dates 3 of when I -- when I started or stopped it, but 4 there -- '92 is a ballpark number. 5 Q. What were the specific market conditions 6 that led to your not actually purchasing the 7 securities that were reflected on the statements? 8 A. There wasn't enough volatility or really 9 volume to do what I wanted to do for the strategy. 10 Q. Explain to me what you mean by that. You 11 mean there weren't enough shares of the securities 12 that you were -- 13 A. It was a combination of not -- the strategy 14 was basically a strategy that required sort of an 15 upmarket, a market that would appreciate. So at that 16 time the markets were in a very fragile state, because 17 of the -- the Gulf War, and there was -- the recession 18 had already started. 19 So in order for the strategy to work 20 successfully you basically had to have an upward bias 21 in the market for the -- for the basket of securities 22 that were involved in the strategy to move towards the 23 upward strike price of the call options that you sold 24 for the strategy. 25 MS. CHAITMAN: Okay. Okay. Now I'd</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. -- able to recognize that -- 2 A. Yes. 3 Q. -- that -- a statement would show that 4 trading strategy; isn't that true? 5 A. Correct. 6 Q. Okay. 7 A. It should. 8 Q. Okay. So is it your testimony that if we 9 found the first split-strike conversion statement, 10 that you would say that that's when the fraud began? 11 A. When I failed -- well, it's -- I had 12 developed a strategy before '92, the split-strike 13 strategy before '92. And I might have actually done 14 some transactions, but I was -- it wasn't until 15 sometime after '92, when the market conditions 16 changed, that I was not able to continue doing the 17 split-strike, and that's when the fraud began. 18 Q. So how would we determine -- what market 19 conditions should we look for in order to determine 20 when you actually stopped buying the positions that 21 were reflected on the statements? 22 A. Well, you could look for the -- you can look 23 for the transactions and -- well, you would -- you 24 could look at the market conditions that occurred, you 25 know, in '92.</p>	<p style="text-align: right;">Page 21</p> <p>1 like to mark as Exhibit 3 the transcript of the 2 plea of Mr. DiPascali. 3 (MADOFF EXHIBIT 3 WAS MARKED FOR 4 IDENTIFICATION.) 5 BY MS. CHAITMAN: 6 Q. Now, Mr. Madoff, I'd like you to -- if you'd 7 look at the transcript, the first page, you can see 8 this is an August 11th, 2009 transcript before Judge 9 Sullivan in the United States of America versus Frank 10 DiPascali. Do you remember when he plead guilty? 11 A. Yes. 12 Q. Okay. If you'd be good enough to turn to 13 page 44. 14 A. Uh-huh. 15 Q. The -- the court is asking Mr. DiPascali 16 to -- to read his plea, and the court says, and I 17 quote, "Let me ask you to read slowly, so that the 18 court reporter can get it down." 19 And then the defendant says, Mr. DiPascali 20 says, and I quote, "I am standing here today to say 21 that from the early 1990s until December of 2008" -- 22 MR. SHEEHAN: Where are you? 23 THE WITNESS: Excuse me. 24 MS. CHAITMAN: Page 44. 25 THE WITNESS: Page 44.</p>

6 (Pages 18 - 21)

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1 A. Yes. David Kugel had nothing to do with
2 these clients. I don't think he's ever spoke to them
3 at this stage. What did he say?
4 Q. Okay. Okay.
5 A. David Kugel's work for me was strictly
6 involving arbitrage securities, convertible bond
7 arbitrage securities. It had nothing to do with --
8 with the trades, the hedged trades that they were
9 doing to get long-term gains.
10 In other words, there's -- David Kugel was
11 hired as an arbitrageur in convertible securities, and
12 that's all he ever was involved in. He was not
13 involved in -- and he would have no reason to give
14 Annette Bongiorno or anybody else in my firm any
15 instructions to create any trades, because they were
16 not -- because he didn't -- he only dealt in
17 convertible securities.
18 And these people were -- were primarily
19 dealing with, you know, just long positions. They did
20 have convertible arbitrage accounts, like everybody
21 else did in the very early stages, but most of their
22 money was involved in these long position accounts, as
23 we called them, which was handled by -- by me and by
24 Annette Bongiorno. And David Kugel, to my knowledge,
25 never touched anything with those trades.

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1 Q. Now, with respect to the convertible
2 arbitrage trading that you did for the investment
3 advisory customers from -- from the 1980s, was that
4 all actual trading that was conducted?
5 A. Correct.
6 MR. SHEEHAN: Object to the form.
7 Sorry.
8 BY MS. CHAITMAN:
9 Q. Sitting here today, Mr. Madoff, are you
10 absolutely certain that the convertible arbitrage
11 trading, which was done for your investment advisory
12 customers, was executed trading which was actually
13 performed by your office?
14 A. Correct.
15 Q. Okay. Is there any doubt in your mind about
16 that?
17 A. No.
18 Q. Now, did David Kugel report to you with
19 respect to his trading?
20 A. Yes.
21 Q. And was his compensation determined based
22 upon his trading performance?
23 A. Correct. All my traders were compensated
24 that way.
25 Q. So tell me how that worked. Did he have to

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1 on a periodic basis supply to you reports of his
2 trades?
3 A. He -- well, he -- you know, he doesn't -- he
4 doesn't have -- the way the -- the way the firm was
5 always operated, which was typical of all firms like
6 ours, market-making or dealer firms, each
7 market-maker, which David Kugel was one of them, that
8 made market in convertible securities, which was
9 really basically all he did.
10 They -- their compensation is based upon a
11 percentage of their net trading profits. So I,
12 particularly at that time, when the firm was much
13 smaller, was very familiar with what the firm's
14 trading profits were with each trader.
15 And David Kugel was one of a number of
16 convertible bond traders in my firm. You know, I
17 always monitored what their -- what their long and
18 shorts were, what their profits were and all.
19 And, of course, it was then -- each trader
20 had his -- had his own account that was kept by the
21 bookkeepers in the firm, and that -- and that was
22 Annette Bongiorno -- not Annette Bongiorno. She had
23 nothing to do with that.
24 That was, you know, handled by the
25 operations people in the firm. And they got a report.

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1 We had a report at the end of each month, which was
2 monitored on a, you know, daily basis as to what their
3 profits were.
4 Q. So let me just understand this. Was there a
5 system in place where you had the ability to monitor
6 on a daily basis what David Kugel --
7 A. Yes.
8 Q. What trades he did?
9 A. Yeah.
10 Q. And how often would you monitor that?
11 A. Pretty much daily.
12 Q. So you would come into the office and
13 monitor on a daily basis what each of the traders had
14 done the day before?
15 A. At the time he's talking about, yes.
16 Q. Okay. And when you say, "at the time he's
17 talking about," you mean the '70s and the '80s?
18 A. Well, in -- certainly in the '70s. You
19 know, in the '80s my sons came into the firm, and
20 the -- the SEC has very specific regulations when it
21 comes to market-making firms.
22 And it's -- the regulation requires there to
23 be a Chinese wall established with the firm, where
24 each trader is only privy to his own trading profits
25 or losses and his positions or risks.

<p style="text-align: right;">Page 38</p> <p>1 And there has to be a -- we had two 2 different types of operations. We had proprietary 3 trading, which is trading for the firm's own account, 4 and market-making, which is also for the firm's own 5 account, but involve making a two-sided market in -- 6 in securities, particularly convertible securities, 7 which was our specialty at that time. 8 So the -- the trader -- each trader only 9 knows what he is buying and selling. He has no idea 10 what the firm is buying and selling. He has no idea 11 what the firm's -- what those positions are. They're 12 walled off. 13 You even have to have a separate supervisor 14 for each one of those departments. So, for example, 15 in the later years my son -- one son ran the 16 market-making department, supervised that. One 17 firm -- one son managed the proprietary trading side 18 of the firm. 19 And then the -- the only one that was 20 familiar with the overall positions of the firm and 21 the firm's investment account was myself, because I 22 was the only one that handled that. 23 So David Kugel would only be privy, like -- 24 like any other trader, to what he was buying and 25 selling, what his profit and loss was, not -- not the</p>	<p style="text-align: right;">Page 40</p> <p>1 they were real? 2 A. Because there were trades -- well, any 3 number of ways. Number one, if he created -- if a 4 trader creates a ticket that is wrong, that says he 5 bought stock and sold stock and didn't, then when the 6 delivery -- when the securities were not delivered or 7 not came in, they wouldn't settle. 8 So there would be -- it would be a vacuum 9 between -- you know, because the way the stock market 10 works, when you do a trade, eventually the trades get 11 settled and the delivery is made of the securities and 12 people pay for it. 13 To say nothing of the fact that we monitor 14 what is being bought and sold for the firm on an 15 ongoing basis. So -- so we would know what the 16 exposure of the firm was, what the profitability of 17 the firm was. 18 So a trader -- a trader can't, you know, 19 create a -- now -- nowadays, you know, with large 20 volumes and so on if you have a lot of traders, a 21 trader can put through what they call a wooden ticket 22 or a rogue trade. That's what you hear about. 23 You can do that if the firm is very large. 24 You know, unless the firm has the proper automation, 25 which we certainly had in the later days, you know,</p>
<p style="text-align: right;">Page 39</p> <p>1 rest of the firm. 2 Q. Okay. And if he did trades that were 3 fictitious, is -- was there some -- if he -- if he 4 gave you a false report as to what he had traded, 5 would you have been able to pick that up? 6 A. Sure. 7 Q. How? 8 A. Well, because I was -- it's between those -- 9 in the '70s is what he's talking about. You know, 10 I -- I -- the firm was not that large that I wouldn't 11 know -- I knew what was going on everywhere in the 12 firm. 13 So I knew -- I would know whether or not he 14 had -- what he was buying and selling. You know, I 15 could see that the firm had -- you know, had the 16 ability, you know -- we had to supervise -- I had to 17 supervise what the firm's risk was, what their 18 positions were, what their inventory was. 19 So if he was creating trades, as he -- as 20 this states, certainly I would know that the trades 21 didn't -- you know, were fictitious. 22 Q. How could you tell -- if he gave you a 23 report, which said, I earned X dollars last month, 24 because I did all of these trades, if he put down 25 fictitious trades, how could you check to make sure</p>	<p style="text-align: right;">Page 41</p> <p>1 you would -- you would be able to detect that. 2 Q. Okay. 3 MR. GOLDMAN: Bernie, if you get tired 4 or you want to stand up and stretch at anytime, 5 just tell us. Okay? 6 THE WITNESS: I'm okay. 7 Can -- can I interject something that I 8 think that maybe will -- will clear up this thing 9 with David Kugel? 10 MS. CHAITMAN: Sure. 11 THE WITNESS: And this -- because 12 this -- this -- this issue of him creating 13 fictitious trades surfaced originally when you 14 were down here last time, seven years ago or six 15 years ago or whatever it was. 16 BY MS. CHAITMAN: 17 Q. Okay. When you -- when you said, "you," 18 you -- you looked at Mr. Sheehan? 19 A. David Sheehan. 20 Q. Okay. 21 A. Yes. Where a -- a scrap of paper was handed 22 to me and to my attorney, Ike Sorkin, at that time 23 that had a handwritten scribbling of a formula with a 24 convertible bond on it that said, for example, X 25 convertible bonds equals X number of shares of stock.</p>

11 (Pages 38 - 41)

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1 It was a -- it was a -- it was when we were
2 setting up a -- the way we traded convertible bonds,
3 which is typical of any -- any firm like ours, for a
4 client. You know, you buy stock into a trading
5 account, because we deal always as principal.
6 So the stock -- we go out, and we buy --
7 we -- as a market-maker we maintain positions in -- in
8 convertible bonds and also in, you know, the related
9 security for that.
10 And then those securities, if they're
11 allocated to clients after the -- the positions are
12 accumulated, you then break up -- you break up the
13 trade. That may be 100 bonds, and you're going to
14 give each client, for example, ten bonds or 15 bonds
15 and so on.
16 So an instruction sheet is issued to --
17 basically to the operations side of the firm as to,
18 you know, how you allocate a buy and a sell.
19 All right. So David Kugel, as one of my
20 convertible bond traders. All right. If the firm was
21 selling -- if -- whether it be from my investment
22 account or from another trader's account, if we were
23 going to -- if I wanted to sell a convertible bond to
24 a client from my firm's trading account or investment
25 account, then, you know, the instructions had to be

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1 issued to the back office as to how many shares or
2 bonds to -- to transact for a client.
3 So this scrap of paper was an instruction
4 sheet that David Kugel, if he was one of the
5 market-makers in a particular security, would be told
6 okay by me, all right. I want to give this bond to
7 this client and so on.
8 He would write an instruction sheet out to
9 the back office, to Annette Bongiorno or Jodi Crupi,
10 if she was there at the time, that this -- this is how
11 you convert this bond.
12 In other words, this bond -- because the
13 back office are not familiar, not being traders, with
14 what the -- what the formulas are. So at the -- that
15 is probably one of maybe 100 different scraps of paper
16 that -- that would be issued or written by David Kugel
17 or another trader, if there was another trader
18 involved, you know, of what the allocation formula is.
19 Now, at that time, you know, when -- the
20 first meeting that I had with the attorneys down here
21 and my attorney, they showed me this piece of paper.
22 And they asked me, what is this?
23 And I looked at it. And at first I wasn't
24 really sure what it was, because the handwriting was
25 hard for me, you know, to understand. Then I said

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1 to -- it looks like to me like a formula, and it looks
2 like David Kugel's handwriting.
3 So I -- I explained, just as I explained to
4 you now, what this was. And I said, you'd probably
5 find a lot of them. So they said, well, you know, so
6 he's the one that is -- that is writing this? And I
7 said, yes. It's an instruction sheet.
8 This is not uncommon for -- you know, this
9 is the way the business is done. That -- now, this
10 was not a fictitious trade. It was -- it was just
11 instructing the -- the operations side of the firm
12 what the allocation.
13 It would be no different than if I said, I'm
14 selling to Carl Shapiro, you know, 1,000 shares of IBM
15 that we had bought, you know, as a -- you know, as
16 part of our business. I would -- I would put through
17 an -- an instruction sheet, sell 1,000 shares of IBM
18 to Carl Shapiro.
19 In David Kugel's side, if he was a trader in
20 that particular security, he would issue the same
21 instruction for that. These are not -- there's
22 nothing fictitious about it.
23 So that -- none of that makes any sense to
24 me. And I think that -- that, you know, one of the
25 problems that I had when I, you know, met with both

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1 the proffer agreement and so on, when I gave my -- and
2 told how the firm operated, there seemed to be sort of
3 a blank stare in the room when I said certain things.
4 And for an example -- now, in fairness to
5 the people that were there, whether it be the trustee,
6 whether it be the U.S. attorney or all the other
7 people and the attorneys and all, the market-making
8 business, the dealer business is -- is a specialized
9 type of business.
10 It is not Merrill Lynch. You know, if you
11 ask the average person how the stock markets work and
12 how Merrill Lynch works, they have no clue. You know,
13 they actually think that every time you buy, for
14 example, a share of stock, the money goes to the
15 company, and the company, you know, invests it.
16 When the average person buys a share of
17 stock, the company gets nothing. It's just all he's
18 doing is buying and selling, you know, from other
19 clients that have the stocks, but people never
20 understood that.
21 The market-making and dealers are a very
22 specialized type of business, and they really don't
23 have a clue. And the best example that I can use is
24 that the U.S. -- the -- the prosecutor at the time
25 asked me, can you please explain the history of the

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1 firm and how you operated?

2 And I said, well, when? He says, from the

3 beginning. So I started in 1960, which is when I

4 started the firm, and I went into -- then after I got

5 to a certain period, I said, like in the '70s I became

6 a market-maker, and I, you know, bought stock, and I

7 sold stock for clients, as well as the firm.

8 Sometimes I was long stock. Sometimes I

9 shorted stock. And I said the word short, and it was

10 like there was a magic, you know, word that I said.

11 He said, short? And what does short mean?

12 And I'm sitting there in a room that has at

13 least three or four SEC people sitting there. So I

14 said, you don't know what short is? And everybody --

15 nobody said anything.

16 So I had to explain the shorts. He said, so

17 you're selling stock, and you don't own it? You

18 shorted it? I said, yes. As a market-maker I'm

19 required at times to sell a stock short.

20 It's part of my -- my job. I have to -- I

21 am required to make a two-sided market. Meaning I

22 have to make a bid and make an offer as a registered

23 market-maker.

24 So, yes, I do short stock for customers. I

25 sell them stock they don't own. Hopefully I'm going

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1 to buy it back, you know, at a profit, not a loss, but

2 that is the typical way of doing business.

3 So, to get back to the -- this issue of

4 David Kugel, when you talk about, you know, him

5 putting instructions to the operations side of the

6 firm, how to allocate a position or a formula, there's

7 nothing unusual about that.

8 It's an everyday occurrence in a

9 market-making firm. How or why he would say that he

10 was creating a fictitious trade, I'm sort of

11 dumbfounded. You know, I just -- it doesn't make any

12 sense to me. And the timing is -- is -- doesn't make

13 any sense to me, you know.

14 Q. Okay. Now, you've just said that you

15 started your business in 1960. Can you tell us the

16 various distinctions that you achieved in the

17 securities industry?

18 A. What do you mean distinctions?

19 Q. Well, you were president of the NASDAQ.

20 A. Oh, you mean the -- my --

21 Q. Achievements.

22 A. All right.

23 Q. You're reading from notes.

24 A. I'm reading from -- because, you know, my

25 brain is a little bit --

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1 MR. SHEEHAN: Could -- could we mark

2 that note?

3 THE WITNESS: -- is fried.

4 MR. SHEEHAN: It should be part of the

5 record, if he's going to read from it.

6 MS. CHAITMAN: Yeah, yeah.

7 MR. SHEEHAN: But you read from it

8 first. We'll mark it afterwards.

9 THE WITNESS: Okay. Well, okay. I was

10 chairman of --

11 BY MS. CHAITMAN:

12 Q. Are these handwritten notes that you've --

13 A. Yes.

14 Q. -- prepared?

15 Okay. Okay.

16 A. The reason why I did this, by the way, is

17 I -- I understand that I have to establish my

18 credibility, you know, at this deposition, because I

19 was --

20 MR. GOLDMAN: Just read.

21 THE WITNESS: I was told that I had no

22 credibility, but apparently, from what I've read

23 in the, you know, cases that I've been reviewing,

24 people that are like David Kugel or Frank

25 DiPascali or other people in my firm, Annette

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1 Bongiorno, who have been accused and admitted

2 guilt, they seem to be the witnesses that all of

3 a sudden have credibility.

4 So -- but I have no credibility, and I

5 don't understand how -- I mean, I admitted that I

6 created a fraud, and for that I can understand

7 why there's some question about whether I have

8 credibility, but since everybody else is

9 establishing their credibility, I feel I have to

10 establish my credibility as well.

11 BY MS. CHAITMAN:

12 Q. Well, let me ask you something, Mr. Madoff.

13 You've been in prison about seven years?

14 A. Seven and a half years.

15 Q. Seven and a half years. And you've had a

16 lot of time to think, haven't you?

17 A. Unfortunately.

18 Q. Yeah. And you've been provided with the

19 services of a prison psychiatrist?

20 A. Yes.

21 Q. And is it fair to say that you allowed a

22 number of different people who are writers and

23 scholars to interview you?

24 A. Yes.

25 Q. Is it fair to say that you at this point

13 (Pages 46 - 49)

<p style="text-align: right;">Page 50</p> <p>1 have had a very long time to think about what you did?</p> <p>2 A. Uh-huh.</p> <p>3 Q. You have to say yes or no.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And do you have any motivation at</p> <p>6 this point to lie about what you did?</p> <p>7 A. No.</p> <p>8 Q. Okay. Tell us what accomplishments you had</p> <p>9 achieved.</p> <p>10 A. All right. I served as chairman of NASDAQ</p> <p>11 and the NASD board of directors, chairman of the --</p> <p>12 Q. Okay. And can you just explain for the</p> <p>13 record what NASDAQ is?</p> <p>14 A. NASDAQ is the automated marketplace for the</p> <p>15 trading of non-listed securities and now listed</p> <p>16 securities as well. It's an automated part of the</p> <p>17 market, like the New York Stock Exchange.</p> <p>18 Q. Okay.</p> <p>19 A. So I --</p> <p>20 Q. And when was NASDAQ formed?</p> <p>21 A. NASDAQ was formed in the late '60s, early</p> <p>22 '70s. I was one of the founders of NASDAQ. And then</p> <p>23 became its chairman and served on the -- the board of</p> <p>24 directors of NASDAQ for nine years.</p> <p>25 I also served as chairman on the board of</p>	<p style="text-align: right;">Page 52</p> <p>1 I was chairman and member of the SEC</p> <p>2 Intermarket Trading System Committee, which is the</p> <p>3 committee that links all of the exchanges, the</p> <p>4 New York Stock Exchange, NASDAQ and the five regional</p> <p>5 exchanges. And I was head of the SEC NASD arbitration</p> <p>6 committee. Those were the committees that I served on</p> <p>7 over the history of my firm.</p> <p>8 Q. Did you advise any foreign governments with</p> <p>9 respect to the establishment of a stock exchange?</p> <p>10 A. Yes. I was -- I served as the liaison and</p> <p>11 consultant to the London Stock Exchange, the London</p> <p>12 Futures Exchange, the Singapore Stock Exchange, the</p> <p>13 Tokyo Stock Exchange, the Frankfurt Stock Exchange,</p> <p>14 the Paris boards and the Moscow Stock Exchange.</p> <p>15 MS. CHAITMAN: We have to wait a</p> <p>16 second.</p> <p>17 THE VIDEOGRAPHER: Going off the</p> <p>18 record. The time is 9:56.</p> <p>19 (RECESS FROM 9:56 A.M. TO 10:16 A.M.)</p> <p>20 (MADOFF EXHIBIT 5 WAS MARKED FOR</p> <p>21 IDENTIFICATION.)</p> <p>22 THE VIDEOGRAPHER: Back on the record.</p> <p>23 The time is 10:16.</p> <p>24 BY MS. CHAITMAN:</p> <p>25 Q. Mr. Madoff, we've taken a break, and do you</p>
<p style="text-align: right;">Page 51</p> <p>1 the National Association of Securities Dealers, also</p> <p>2 for nine years, starting in the early '80s through</p> <p>3 that.</p> <p>4 I was also founder and chairman of the</p> <p>5 National Securities Clearing Corporation and</p> <p>6 Depository Trust. I was chairman of the International</p> <p>7 Securities Clearing Corporation.</p> <p>8 I was chairman of the NASD trading</p> <p>9 committee. Chairman of the NASD National Market</p> <p>10 Design Committee. Chairman of the National</p> <p>11 Association for Securities Business -- National</p> <p>12 Business Conduct Committee, which is a regulatory arm</p> <p>13 of the -- of the industry.</p> <p>14 I served as chairman of an SEC Large Trader</p> <p>15 Reporting Committee. I chaired -- was -- served as</p> <p>16 chairman of the NASD Small Order Execution Committee.</p> <p>17 Chairman of the NASD Surveillance Committee and</p> <p>18 chairman of an SEC NASD Payment for Order Flow</p> <p>19 Committee.</p> <p>20 I was also a member of the Securities</p> <p>21 Industry Association board of directors, the</p> <p>22 Securities Industry Association Trading Committee,</p> <p>23 Securities Industry Association Federal Regulation</p> <p>24 Committee, Security -- chairman -- a member of the SEC</p> <p>25 SIAV/SIA Capital Markets Committee.</p>	<p style="text-align: right;">Page 53</p> <p>1 remember where we were when we were interrupted?</p> <p>2 A. Yes. We were -- I had listed the number of</p> <p>3 exchanges that I was advising on building new trading</p> <p>4 platforms, and I listed, you know, basically London,</p> <p>5 Singapore, Tokyo, Frankfurt, Paris and Moscow.</p> <p>6 This was basically partly at the request of</p> <p>7 the SEC, who was asked by these various exchanges if,</p> <p>8 in fact, they could have me willing to -- to travel</p> <p>9 over there to consult with them on building a platform</p> <p>10 that was similar to the NASDAQ platform that I was one</p> <p>11 of the ones that designed that platform for -- for</p> <p>12 NASDAQ.</p> <p>13 And the SEC had a policy basically where</p> <p>14 they would send up, you know, teams of employees to</p> <p>15 come up -- basically compliance people, come up to</p> <p>16 watch us into our trading room to witness us trading</p> <p>17 on a daily basis and looking at the operations side of</p> <p>18 the firm and the automation side of the firm.</p> <p>19 So they would -- we did that for a number of</p> <p>20 years, where they came and watched us trade, and we</p> <p>21 consulted with them. So --</p> <p>22 Q. Now, when you say, "they," you mean people</p> <p>23 who were employed by the SEC --</p> <p>24 A. Yeah. We had --</p> <p>25 Q. -- would come to your offices?</p>

14 (Pages 50 - 53)

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1 A. The past four chairmen of the SEC have all
2 been up in my office, watching us trade and meeting
3 with us, as well as all of these foreign exchanges.
4 As a matter of fact, the -- the NASD used
5 our -- during the 9/11 crisis the SEC and the NASD
6 asked us, would we allow the NASD to -- to operate
7 their backer facility out of our backer facility that
8 we had in Queens, because that's the -- everybody was
9 having problems because of the -- you know, the -- the
10 bombing out of the -- the plane crashing into the
11 buildings.
12 So the NASD for a period of, I guess it was,
13 three months used our facilities to back up their
14 trades, and also their compliance people sat in my
15 office for a period of months, operating, you know,
16 because they didn't have -- their offices were
17 destroyed.
18 Q. Now, Mr. Madoff, I think you know that the
19 trustee has taken the position in court he has not
20 conceded that you ever did any legitimate trading.
21 Can you explain to us -- starting in 1960 and then
22 ending on December 11th, 2008 can you explain to us
23 the volume of trading that you did in various periods
24 of time and the number of employees whose job was to
25 conduct real trades?

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1 A. Well, when I started my firm in 1960, it was
2 basically myself. And I operated at that time out of
3 my father-in-law's accounting office, because I was in
4 law school at the time. So in those days it was very
5 common for small brokerage firms to operate.
6 As a matter of fact, I started with \$500 of
7 capital. And that was a small amount even by the
8 SEC's standard during that time. So I was required to
9 meet with the New York office of the SEC to explain
10 how I basically had the nerve to present a handwritten
11 balance sheet with \$500 cash assets and no
12 liabilities.
13 And, you know, so they wanted to make sure
14 that I was real. And I started with the \$500 of -- of
15 capital, which in those days didn't require much,
16 because I was -- my plan was just to do a small retail
17 business basically with my family as clients.
18 That, you know, eventually grew from a
19 one-man operation to, I guess, you know, 200 some odd
20 people here and in -- in London in 2008.
21 I started this small retail firm.
22 Relatively unsuccessful the first couple of years,
23 because I ran into the Cuban missile crisis, and the
24 marketplace collapsed in 2000 -- in 1962.
25 Required me to borrow \$30,000 from my

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1 father-in-law in the form of -- of municipal bonds to
2 recapitalize my firm, which I paid back, you know, a
3 year or so later.
4 And then gradually just -- and then became a
5 market-making firm in the '70s, early '70, and became
6 a market-making firm for the rest of the balance of my
7 50 years in the business.
8 At one -- we -- at the -- by the time we
9 were finished in 2008 the firm was operating -- was
10 executing a few 100,000 trades, up to 600,000 trades a
11 day at the high, but we were averaging about 300,000
12 transactions a day, and we represented ten percent of
13 the United States' volume in -- in transactions.
14 Q. Now, we're talking about legitimate
15 transactions?
16 A. All market-making were legitimate
17 transactions. The -- and the firm was operating
18 basically as -- primarily most of the time as a
19 market-making and proprietary trading firm.
20 It was -- the investment advisory firm
21 really came into -- you know, into being on a gradual
22 basis, and then was my undoing basically in the early
23 '90s, because of a problem that occurred originally in
24 '80 -- as I say, the crash in '87, but perpetuated a
25 fraud that started, as I said, in the '90s, which was,

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1 you know, a disaster.
2 Q. And when -- the fraud in the '90s you're
3 referring to is the split-strike conversion?
4 A. Correct.
5 Q. Okay. Now, can you just briefly explain
6 what the difference is between market-making and
7 proprietary trading?
8 A. Well, market-making is -- in order to be a
9 market-maker, according to SEC and NASD regulations,
10 you have to maintain an inventory -- trading inventory
11 and making a two-sided market. In other words, you --
12 you post bids and offers to the -- to the market in
13 general.
14 Originally that was done in the
15 over-the-counter market through what was called pink
16 sheets, where they were daily published bids and
17 offers of the brokerage firms in the United States,
18 listing what you were willing to buy and sell
19 securities.
20 And you had to be ready to buy and sell
21 securities, whether either long or short, for -- for
22 the market in general or for your clients.
23 Then with the development of NASDAQ, which
24 was an -- which was the first automated system,
25 basically we automated the pink sheets.

<p style="text-align: right;">Page 82</p> <p>1 IDENTIFICATION.)</p> <p>2 MS. CHAITMAN: Oh, you know what? I'll</p> <p>3 give this to the witness, and I'll give this to</p> <p>4 you.</p> <p>5 THE WITNESS: I already have a copy.</p> <p>6 MS. CHAITMAN: I'm sorry?</p> <p>7 THE WITNESS: I have a copy of this</p> <p>8 one.</p> <p>9 MS. CHAITMAN: You can just give it to</p> <p>10 the reporter.</p> <p>11 MR. GOLDMAN: David, here is one you</p> <p>12 can look at.</p> <p>13 MR. SHEEHAN: I'm fine. I brought my</p> <p>14 own.</p> <p>15 MR. GOLDMAN: Oh.</p> <p>16 THE WITNESS: Are you still awake?</p> <p>17 MR. SHEEHAN: Always.</p> <p>18 THE WITNESS: The last time we were</p> <p>19 together, I had a meeting with you, you fell</p> <p>20 asleep during my testimony.</p> <p>21 MR. SHEEHAN: Yeah, you warned me about</p> <p>22 that. I remember that exchange.</p> <p>23 THE WITNESS: That's okay. I --</p> <p>24 MR. SHEEHAN: You told me the SEC fell</p> <p>25 asleep in that meeting too. I remember that.</p>	<p style="text-align: right;">Page 84</p> <p>1 report had to deal with the split-strike conversion</p> <p>2 trades, which I was sort of at a loss for -- and this</p> <p>3 report, from what I understand from -- cost a lot of</p> <p>4 money to -- to produce.</p> <p>5 And I had from day one acknowledged that</p> <p>6 there was no split-strike trades being done and that</p> <p>7 there was a fraud. So I couldn't understand why so</p> <p>8 much money was --</p> <p>9 Look, let me just say that from the time</p> <p>10 that I plead guilty for this -- for this fraud, I've</p> <p>11 had to live with the guilt of -- of knowing what I</p> <p>12 did.</p> <p>13 All right. And my decision basically to --</p> <p>14 to plead guilty and to not go to trial was to be able</p> <p>15 to recover as much money as possible to my -- for my</p> <p>16 clients.</p> <p>17 And the -- you know, rather than go to -- to</p> <p>18 trial, which I knew that I was guilty of, and put my</p> <p>19 family through a -- the horror of, you know, what</p> <p>20 would -- what would occur with the trial, I -- I</p> <p>21 decided that the best thing that I could do would be</p> <p>22 to plead guilty, take my sentence and do everything</p> <p>23 that I could to recover the money for the clients, who</p> <p>24 I defrauded.</p> <p>25 Q. Let me just interrupt you there.</p>
<p style="text-align: right;">Page 83</p> <p>1 THE WITNESS: I -- I can -- I can put</p> <p>2 people to sleep. The chairman of the London</p> <p>3 Stock Exchange fell asleep during one of my</p> <p>4 meetings with him, but he said it was jet lag.</p> <p>5 You don't have jet lag. So --</p> <p>6 MR. SHEEHAN: I have no jet lag.</p> <p>7 BY MS. CHAITMAN:</p> <p>8 Q. Mr. Madoff, I had sent you in advance of the</p> <p>9 deposition a copy of Mr. Dubinsky's report. Have you</p> <p>10 had a chance to review it?</p> <p>11 A. Yes, I have.</p> <p>12 Q. Okay. And did you agree with his</p> <p>13 conclusions?</p> <p>14 A. Some of them.</p> <p>15 Q. Okay. Did you agree with all of them?</p> <p>16 A. No.</p> <p>17 Q. Okay. Did you find that overall there were</p> <p>18 some mistakes that Mr. Dubinsky made?</p> <p>19 MR. SHEEHAN: Objection as to the form.</p> <p>20 THE WITNESS: Yes.</p> <p>21 BY MS. CHAITMAN:</p> <p>22 Q. Okay. Before we go into detail with respect</p> <p>23 to the report can you tell me some of the mistakes</p> <p>24 that you found with Mr. Dubinsky's approach?</p> <p>25 A. Well, first of all, the majority of the</p>	<p style="text-align: right;">Page 85</p> <p>1 When you saw in -- in 2008 that the economy</p> <p>2 was collapsing, and you had -- you had out-of-ordinary</p> <p>3 redemptions in 2008; isn't that true?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Would you say that the redemption</p> <p>6 demand was extraordinary or --</p> <p>7 MR. SHEEHAN: Object to form.</p> <p>8 THE WITNESS: Well, yes. I mean, look,</p> <p>9 unfortunately or fortunately, however you want to</p> <p>10 look at it, my commitment to the people that I</p> <p>11 took the money from for the split-strike was that</p> <p>12 they could have their money back at anytime.</p> <p>13 In other words, most hedge funds do</p> <p>14 not -- do not allow people to withdraw their</p> <p>15 money. They have what they call lockup periods.</p> <p>16 They -- they say that you have to give them 90</p> <p>17 days notice, sometimes six months notice before</p> <p>18 you can get your money back.</p> <p>19 Because of the way the split-strike</p> <p>20 strategy was designed there was no reason to have</p> <p>21 a lockup period if, in fact, I was doing it the</p> <p>22 way I intended to do it originally.</p> <p>23 So that people that gave me money,</p> <p>24 whether it be an individual or whether it be a</p> <p>25 hedge fund, to invest, had the ability to call me</p>

22 (Pages 82 - 85)

<p style="text-align: right;">Page 86</p> <p>1 up and say, you know, that they wanted their 2 money back within the settlement period of three 3 days or four days. 4 So when this -- when this bank run 5 occurred with the crisis in 2008, when everybody 6 thought the world was coming to an end, the 7 market was -- was crashing, because of the 8 Lehman -- you know, first Bear Stearns and then 9 the Lehman collapse, everybody needed money. 10 So I was one of the few places that 11 they could -- that a hedge fund could go to -- to 12 demand their money back and not have to wait with 13 a lockup period. So everybody was calling me up, 14 saying, we want -- we need the money, you know, 15 to meet margin calls elsewhere on Wall Street. 16 They needed money back to meet their 17 margin calls on Wall Street. So send me my money 18 back and liquidate the position, and I'll send it 19 back to you to reinvest as soon as things calm 20 down. 21 So I was the -- the one place that they 22 could go to get the money. So I started getting 23 everybody calling me up, you know, send me 500 24 million, send me a billion dollars back. And I 25 did. I started sending the money back.</p>	<p style="text-align: right;">Page 88</p> <p>1 attorneys pleaded with me to cooperate with the 2 government. 3 The government wanted -- the prosecutor 4 wanted me to -- to plea bargain with them to, you 5 know, make some sort of a deal by providing 6 information as to who else was involved in this fraud. 7 I mean, the belief was that I couldn't be 8 doing this all myself, that there had to be other 9 people involved in this fraud. So -- because, look, 10 nobody could understand -- you know, it seems that for 11 the past eight years nobody can figure out why did 12 Bernie Madoff do this? 13 There have been books written about this. 14 Every reporter that's called me, every academic, you 15 know, that's called me from every business school 16 literally in the world, everybody says, why would 17 Bernie Madoff commit the largest fraud in history? 18 Why -- he had a very successful business 19 that was the envy of everybody on Wall Street. He was 20 on all of these committees. He was supposedly boy 21 wonder, of course, you know, of Wall Street at that 22 time. 23 Why would he do this? The SEC was 24 dumbfounded. You can speak to any of the past 25 chairmen over the past eight years and ask them, would</p>
<p style="text-align: right;">Page 87</p> <p>1 But, obviously, you know, I couldn't 2 keep doing that, because, you know, of the -- the 3 nature of -- of the Ponzi scheme. So I knew 4 that -- that the game was over. 5 As it turns out, I was -- 6 BY MS. CHAITMAN: 7 Q. If I could just interrupt you. Do you 8 recall approximately how much money you did send back 9 to customers in 2008? 10 A. Close to six billion dollars. 11 Q. Six billion. Okay. 12 A. But I knew that -- that it was over for me, 13 and -- 14 Q. At that -- 15 A. As it -- as it turns out, I was mentally -- 16 I was in a mental state that I was -- I could no 17 longer continue with -- anyhow. So it was almost like 18 a relief to say, this is it. 19 I just can't continue this charade any 20 longer. And that's what -- that's what caused me to 21 acknowledge to my family that I had been committing 22 this fraud. 23 Q. Okay. 24 A. So, to continue, I decided to plead guilty 25 to this. And when -- before the sentencing my</p>	<p style="text-align: right;">Page 89</p> <p>1 Bernie Madoff do this? You know, they would all look 2 at you as though there was something wrong with you. 3 And that's what everybody wanted to know. 4 It didn't make any sense. There had to be something 5 else that created this problem. Was he blackmailed? 6 Was he, you know, involved with -- you know, with the 7 Russian mob? Was he involved with drug dealers? 8 Something happened, you know. You don't -- 9 you don't -- you know, and when I said -- you know, 10 when I gave explanations for it, nobody really 11 understood it, you know, but I knew, you know, what 12 happened. 13 I knew, yes, there were people involved that 14 put me in this situation. That being said, it was my 15 fault. I can't blame anybody for -- for what 16 occurred. I mean, I did this knowingly. 17 I was not blackmailed by any -- was not 18 involved with any mob thing. I made a tragic error of 19 judgment that was precipitated by a number of clients 20 that, you know, put me in this situation. 21 That being said, there was not a gun to my 22 head. You know, I could have refused to accommodate, 23 you know, some people that I tried to accommodate. 24 And -- you know, so, therefore, I have the 25 responsibility.</p>

23 (Pages 86 - 89)

<p style="text-align: right;">Page 90</p> <p>1 So my decision at that time was not to make 2 a plea bargain. I was convinced that I could get the 3 money back that was involved that people lost. I 4 couldn't get the profits back, for sure, but I 5 certainly felt I could recover the principal, you 6 know, back. 7 So -- and I knew that my clients had 8 withdrawn -- many of them over the earlier years 9 before the fraud started that they had -- they had 10 made and -- and withdrew legitimate profits over the 11 years. 12 So I felt that while people were not going 13 to make an average annual return of 12 percent, as 14 they thought that they made, they certainly would -- 15 would do all right, and I certainly would be able to 16 recover everyone's principal. 17 So when I told my attorneys that, Ike 18 Sorkin, I said, look, I'm going to recover everybody's 19 money, you know, you know, but I -- I have to do this 20 my way. I can't -- I can't establish a plea. I don't 21 want to make any deal. 22 I said, I'm the only one that really has the 23 knowledge of what happened and what people did to put 24 me in this situation and the wrongdoing that certain 25 people were involved in, I said.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Yes. 2 Q. Okay. Let's -- let's go through them one at 3 a time. 4 A. Okay. All right. Basically what -- well, 5 I'd like to say is that I would -- I'm not going to 6 get involved in his -- the majority of the report that 7 deals with the split-strike conversion trades or 8 whether or not the trades were executed or not, 9 because the -- I have no objection to -- I can't find 10 fault with what he -- what his determination was, 11 because I was not executing the trades. 12 So there's no point in me, you know, 13 evaluating what he says was right or wrong. There may 14 be errors in there, but it doesn't matter. The fact 15 was the errors that I found were -- had to deal with 16 the beginning of the report dealing with the 17 convertible -- the trading that took place before 18 1992, which basically involved the convertible bond 19 arbitrage transactions. 20 So, first of all, let me start by saying 21 that it was quite -- I understand that his -- from his 22 CV that he has a very good CV. All right. In other 23 words, he seems to be -- have his references of fraud 24 reporting or -- I don't find any fault with that. He 25 seems to have a lot of experience.</p>
<p style="text-align: right;">Page 91</p> <p>1 And if I go to these people and -- which 2 I've already done to a certain extent anyhow -- and 3 threaten them with -- you know, with their complicity, 4 I said, I'll get the money back. Now, nobody believed 5 that I could possibly do this. 6 MS. CHAITMAN: We're just running out 7 of the tape. So we have to -- 8 THE WITNESS: Okay. 9 MS. CHAITMAN: -- take a break. 10 THE VIDEOGRAPHER: Okay. This ends 11 media number one in the deposition of Bernie 12 L. -- Bernard L. Madoff. Going off the record. 13 The time is 11:12. 14 (RECESS FROM 11:12 A.M. TO 11:27 P.M.) 15 THE VIDEOGRAPHER: Back on the record. 16 This begins media number two in the deposition of 17 Bernard L. Madoff. The time is 11:27. 18 BY MS. CHAITMAN: 19 Q. Mr. Madoff, we've been -- 20 A. Okay. I -- 21 Q. -- discussing a few other things, but I want 22 to come back, if I may, to the Dubinsky report. 23 A. Right. 24 Q. And my question is: Are there some 25 fundamental errors that you feel Mr. Dubinsky made?</p>	<p style="text-align: right;">Page 93</p> <p>1 That being said, it became very obvious to 2 me that his knowledge of the market-making and the 3 dealer markets and the over-the-counter trading, 4 whether it be convertibles or so on, there -- he had 5 very little experience in that. 6 And that's not a great surprise to me, 7 because it's sort of a specialized marketplace. And 8 unless, you know, you -- you have firsthand experience 9 of how market-makers operate, how the dealer market 10 works and how the trading of convertible bonds takes 11 place, you know, that's a specialized kind of 12 marketplace. 13 And he had things that were really wrong. 14 For example, he makes the statement that Madoff sent a 15 confirmation to a client, where he -- you know, the 16 client -- he says that the client bought stock or sold 17 stock, which was opposite of what happened. 18 In other words, typically when a retail 19 client gets a confirmation from Merrill Lynch, for 20 example, it states the client bought IBM at a price or 21 sold IBM at a price. 22 When a dealer sends a confirmation to a 23 client, it says, we bought, we sold. Meaning the 24 dealer bought or sold to the client. So, for example, 25 there's a confirmation, and I have a -- a copy of one</p>

24 (Pages 90 - 93)

<p style="text-align: right;">Page 94</p> <p>1 of our confirmations.</p> <p>2 Well, I don't need that. In other words,</p> <p>3 our confirmation says we bought. That means Madoff</p> <p>4 bought for the customer or from the customer or sold</p> <p>5 to the customer.</p> <p>6 Q. Okay. You know what? I don't know if this</p> <p>7 is going to help you, but --</p> <p>8 A. Here is --</p> <p>9 Q. Okay.</p> <p>10 A. Here is a confirmation. There's a</p> <p>11 confirmation --</p> <p>12 MR. SHEEHAN: Let her mark that.</p> <p>13 MS. CHAITMAN: I will.</p> <p>14 THE WITNESS: It says in the box, "We</p> <p>15 sold." All right. Or it would say, we bought.</p> <p>16 "We," referring to the firm. Madoff.</p> <p>17 Now, if we had said you bought or you</p> <p>18 sold, that would be the customer bought. You</p> <p>19 know -- you know what I'm saying?</p> <p>20 MR. SHEEHAN: Uh-huh.</p> <p>21 THE WITNESS: All right. This is a</p> <p>22 standard dealer confirmation. It also has on</p> <p>23 here codes, the transaction code and a capacity</p> <p>24 code. Meaning that it has a number.</p> <p>25 Meaning what is -- what -- what</p>	<p style="text-align: right;">Page 96</p> <p>1 transact business for the customer.</p> <p>2 So it says Madoff is the agent for the</p> <p>3 customer. It doesn't say that -- you know, so</p> <p>4 that means that Bernard Madoff, myself, when --</p> <p>5 he's authorizing me as the only person that is</p> <p>6 authorized to transact the business with the</p> <p>7 firm.</p> <p>8 So the firm is transacting business as</p> <p>9 principal for their own account, which it clearly</p> <p>10 states that on the confirmation. He -- this</p> <p>11 totally confused him for some reason.</p> <p>12 BY MS. CHAITMAN:</p> <p>13 Q. Mr. Madoff, can I just stop you for a</p> <p>14 second.</p> <p>15 I'm going to show you a statement, but if --</p> <p>16 if a -- if a customer's statement says bought 100</p> <p>17 shares of IBM --</p> <p>18 A. That means the customer bought it on the</p> <p>19 statement. The statement is showing it as the</p> <p>20 customer bought. Okay. The statement is assuming the</p> <p>21 customer -- that he's bought it from Madoff.</p> <p>22 He knows it, because Madoff is sending the</p> <p>23 confirmation -- is sending the statement to the</p> <p>24 customer, saying, you -- he's reflecting the</p> <p>25 customer -- what the customer bought and sold. It's</p>
<p style="text-align: right;">Page 95</p> <p>1 capacity are we operating? Where -- on the back</p> <p>2 of the confirmation it says the capacity -- the</p> <p>3 transaction is transacted over the counter in</p> <p>4 New York and so on. It also has a capacity code,</p> <p>5 which is trading as principal or agent and so on.</p> <p>6 Dubinsky -- okay -- is used to seeing a</p> <p>7 retail confirmation, which would have the</p> <p>8 opposite of that. So he makes a big point in his</p> <p>9 report of saying that Madoff reflected this wrong</p> <p>10 for the customer.</p> <p>11 All right. He says that, you know --</p> <p>12 now, that's -- there's -- nobody that was</p> <p>13 familiar with the dealer markets would make that</p> <p>14 kind of a statement. It's -- it's -- quite</p> <p>15 frankly, it's an embarrassment, you know, to --</p> <p>16 to put that in the report.</p> <p>17 All right. He then says that it --</p> <p>18 this was in violation of his agreement with the</p> <p>19 customer to act as agent. If you look at the</p> <p>20 agreements that we have with our clients, and</p> <p>21 there's a whole series of when a customer opens</p> <p>22 an account agreement, where there's a trading</p> <p>23 authorization and so on, it says that Madoff,</p> <p>24 meaning Bernard L. Madoff, the client is giving</p> <p>25 Madoff -- is appointing Madoff his agent to</p>	<p style="text-align: right;">Page 97</p> <p>1 not reflecting who he --</p> <p>2 Q. Okay.</p> <p>3 A. -- bought and sold it from --</p> <p>4 Q. Okay. So you're --</p> <p>5 A. -- because we already know that.</p> <p>6 Q. You're distinguishing between the</p> <p>7 confirmation and the statements?</p> <p>8 A. The statement -- yes. The statement is --</p> <p>9 was -- the statement only shows a transaction on the</p> <p>10 settlement date. All statements are operated that way</p> <p>11 with every brokerage firm. The confirmation shows</p> <p>12 both the trade date and the settlement date.</p> <p>13 MS. CHAITMAN: Okay. Let me mark as</p> <p>14 Exhibit 8 the document to which you've been</p> <p>15 referring.</p> <p>16 (MADOFF EXHIBIT 8 WAS MARKED FOR</p> <p>17 IDENTIFICATION.)</p> <p>18 BY MS. CHAITMAN:</p> <p>19 Q. And if I can just summarize this, this is</p> <p>20 dated -- the trade date is October 14th, 2005. The</p> <p>21 settlement date is October 19th, 2005. And it says --</p> <p>22 you've crossed out the account number, but it says,</p> <p>23 "Sold" -- "we sold 42 shares" --</p> <p>24 A. To the customer.</p> <p>25 Q. -- "of Wells Fargo"?</p>

25 (Pages 94 - 97)

<p style="text-align: right;">Page 98</p> <p>1 A. To the customer. Right.</p> <p>2 Q. Okay. So, "we," is Bernard L. Madoff?</p> <p>3 A. Right.</p> <p>4 Q. So -- so let me just understand something.</p> <p>5 So if the customer was buying 42 shares of Wells</p> <p>6 Fargo, you wouldn't go into the marketplace and -- and</p> <p>7 buy it for the customer?</p> <p>8 A. Well, we -- we could, but we buy it -- we'd</p> <p>9 go into the marketplace and buy it for our own account</p> <p>10 and then resell it to the customer.</p> <p>11 Q. Okay.</p> <p>12 A. That's how principal trades work.</p> <p>13 Q. Okay. As a general statement with respect</p> <p>14 to the investment advisory customers --</p> <p>15 A. Uh-huh.</p> <p>16 Q. Now, obviously from whenever in 1992 you</p> <p>17 stopped executing split-strike trades, there weren't</p> <p>18 any purchases and sales?</p> <p>19 A. That's correct.</p> <p>20 Q. So --</p> <p>21 MR. SHEEHAN: Object to the form.</p> <p>22 Sorry. What I'm going to do in the future is</p> <p>23 just say form or object.</p> <p>24 MS. CHAITMAN: That's fine. It doesn't</p> <p>25 matter.</p>	<p style="text-align: right;">Page 100</p> <p>1 began.</p> <p>2 A. Correct.</p> <p>3 Q. Okay. So we're going to go earlier than</p> <p>4 whatever date that was in 1992, when the split-strike</p> <p>5 trades were not executed.</p> <p>6 A. And the Dubinsky report that's making this</p> <p>7 statement is referring to a convertible bond trade</p> <p>8 that was in the period that you're talking about.</p> <p>9 Q. Okay. So as to the convertible bond trades,</p> <p>10 is it generally true that the customers were buying</p> <p>11 from Madoff and selling to Madoff?</p> <p>12 A. Correct. From Madoff's inventory that he</p> <p>13 already had or that he just bought or sold.</p> <p>14 Q. Is -- is that true for everyone in the --</p> <p>15 if -- if I take the convertible --</p> <p>16 A. Operating as a dealer. Yes.</p> <p>17 Q. So with your investment advisory customers,</p> <p>18 who were doing convertible arbitrage --</p> <p>19 A. Uh-huh.</p> <p>20 Q. -- their transactions always were with</p> <p>21 Madoff?</p> <p>22 A. Correct.</p> <p>23 Q. So --</p> <p>24 A. All of our customers -- we always traded</p> <p>25 for --</p>
<p style="text-align: right;">Page 99</p> <p>1 MR. SHEEHAN: I don't want to interrupt</p> <p>2 the flow.</p> <p>3 MS. CHAITMAN: Yeah, that's all right.</p> <p>4 BY MS. CHAITMAN:</p> <p>5 Q. I want to exclude the period after you</p> <p>6 stopped executing trades that were reflected on the</p> <p>7 statement. So whenever that was. Okay. Whether --</p> <p>8 you know, whatever month of --</p> <p>9 A. Okay.</p> <p>10 Q. -- 1992 it was. Let me take the time before</p> <p>11 that.</p> <p>12 A. Yeah. Well, he's -- the Dubinsky report</p> <p>13 that was making the statement of a trade that was a</p> <p>14 convertible bond trade that was actually made. So the</p> <p>15 example he's using -- he's not talking about a</p> <p>16 split-strike.</p> <p>17 He's talking -- he's saying that -- on the</p> <p>18 convertible bond trade didn't really exist, because</p> <p>19 Madoff's confirmation is incorrect.</p> <p>20 Q. Okay.</p> <p>21 A. So --</p> <p>22 Q. So let me -- so let me just try to</p> <p>23 understand something. I want to take the period -- I</p> <p>24 want to limit my questions and your answers to the</p> <p>25 period when you -- before the split-strike fraud</p>	<p style="text-align: right;">Page 101</p> <p>1 Q. From your own inventory?</p> <p>2 A. Other than theoretically in options, we</p> <p>3 traded from our own inventory.</p> <p>4 Now, again, a dealer operates -- you -- a</p> <p>5 customer may tell the -- we may decide to sell stock</p> <p>6 to a customer or buy stock from a customer.</p> <p>7 Now, we may already have that stock in our</p> <p>8 inventory, and we're selling it to the customer from</p> <p>9 inventory or the customer may -- we may not have the</p> <p>10 stock in inventory.</p> <p>11 So we have to go out and buy it into -- from</p> <p>12 Wall Street, from the marketplace, into our inventory</p> <p>13 and then resell it to the customer. So that might</p> <p>14 happen over a period of the same day or it might</p> <p>15 happen over a period of a week and so on.</p> <p>16 Which brings me to the next point. Okay?</p> <p>17 That --</p> <p>18 Q. Can you -- can you remember that? Because I</p> <p>19 have a question about this.</p> <p>20 A. Okay. Go ahead. Then give me that then.</p> <p>21 Q. Give me a word, so I can remind you about</p> <p>22 your next point.</p> <p>23 A. I'll remember.</p> <p>24 Q. You promise?</p> <p>25 A. Yes.</p>

26 (Pages 98 - 101)

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1 Q. Okay. So -- so let's say that in the
2 convertible arbitrage strategy you had a need for
3 5,000 shares of IBM, because you were going to sell
4 them to the convertible arbitrage customers.
5 A. Right.
6 Q. Okay. Mr. Dubinsky was looking for the
7 purchase of 5,000 shares of IBM on a specific date in
8 the market; right?
9 MR. SHEEHAN: Objection.
10 THE WITNESS: Uh-huh.
11 BY MS. CHAITMAN:
12 Q. Is that what he should have been doing?
13 A. I'm not sure I understand your question.
14 Q. Okay. Well, let me start it over again.
15 Dubinsky made the point in several instances
16 that with the convertible arbitrage strategy the
17 statements all together showed more purchases of a
18 particular security than he could find records for --
19 A. Okay.
20 Q. -- on the New York Stock Exchange.
21 A. Okay. All right. So that's a -- that's a
22 different subject, but -- all right. He -- if
23 we're -- he -- what Dubinsky was -- was trying to
24 establish or -- was that the -- the number of bonds
25 that we -- let's say convertible bonds, because we're

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1 talking about convertibles, because we're referring to
2 bonds rather than stock.
3 Q. Okay.
4 A. Okay? So Dubinsky is claiming that if we
5 show on a confirmation or in a customer account that
6 we bought stock -- we sold stock to a customer or
7 bonds to -- to a customer, that he looks to try and
8 establish that there weren't enough bonds that
9 actually traded in the marketplace at the time that we
10 claim that we bought the bonds for the customer.
11 All right. So the way he researches that is
12 he looks on the New York Stock Exchange, you know,
13 number of bonds that traded on the New York Stock
14 Exchange, and shows that that was, let's say, 100
15 bonds, and Madoff bought 200 bonds for a customer.
16 So, therefore, he couldn't have possibly
17 bought 200 bonds for a customer, because only 100
18 bonds traded on the -- on the New York Stock Exchange.
19 All right. Now, the -- the fallacy of that
20 is that, number one, convertible bonds, which is what
21 he's researching here, do not trade on the New York
22 Stock Exchange. They trade over the counter.
23 And to demonstrate that I happen to -- I
24 brought this. This is a very expensive book, I was
25 told. I happened to find it in the library here, for

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1 some strange reason. It's the -- it's the Bible of --
2 of the bond markets. All right.
3 MR. GOLDMAN: Tell us the title, so we
4 have it.
5 THE WITNESS: It's the, "Bond and Money
6 Markets: Strategy, Trading, Analysis."
7 BY MS. CHAITMAN:
8 Q. And who is the author?
9 A. Moorad Choudhry or something of that sort.
10 MR. SHEEHAN: Could we have the
11 spelling of that since we won't be able to take
12 the book with us?
13 THE WITNESS: Moorad --
14 MS. CHAITMAN: Okay. So the -- the
15 book is written by, M-o-o-r-a-d, and then his
16 last name is, C-h-o-u-d-h-r-y. And it's
17 published by Butterworth-Heinemann Finance, and
18 it's called the, "Bond and Money Markets."
19 MR. SHEEHAN: What edition is it?
20 Sorry. So I don't want to have the wrong book.
21 MS. CHAITMAN: You know what? I'll let
22 you look at it. It -- it's -- it's first
23 edition.
24 MR. SHEEHAN: Okay. Fine.
25 MS. CHAITMAN: First edition.

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1 THE WITNESS: All right. You know, I
2 happened to have made a copy of this. It's
3 discussing the secondary market, which is
4 what's -- you know, when you -- when you buy and
5 sell stock for clients, you're buying in the
6 secondary market, as opposed to the primary
7 market.
8 The primary market is when a company
9 goes public, they sell stock in the primary
10 market. All right. Then after the company sells
11 that stock to the public, it then trades -- the
12 stock trades for the rest of the -- its life in
13 the secondary market. All right.
14 MR. GOLDMAN: Bernie, you keep saying,
15 "stock." You mean bond too; right?
16 THE WITNESS: Same thing.
17 MR. GOLDMAN: Okay.
18 THE WITNESS: You know. So, you know,
19 it basically is talking about -- you know, this
20 section was -- was talking about convertible
21 bonds.
22 It says here -- it says, "Corporate
23 bonds virtually everywhere are traded on an
24 over-the-counter, OTC, basis. That is directly
25 between counterparties over the telephone."

27 (Pages 102 - 105)

<p style="text-align: right;">Page 106</p> <p>1 Meaning people like Madoff. 2 "Bonds are usually listed on the 3 exchange." I'll read what it says. "On the New 4 York Stock Exchange a low volume of trading in 5 bonds takes place on the exchange itself, but 6 this is dwarfed by the volume of trading in the 7 bonds in the over-the-counter market." 8 In other words, what they're stating is 9 that, although, this is a bond that is listed on 10 the New York Stock Exchange, you know, most of 11 the trading takes place in that bond in the 12 over-the-counter market. 13 It's a listed bond. So you can buy it 14 on the New York Stock Exchange, but no one does 15 that. It's traded over the counter. So 16 Dubinsky, you know, looks -- when he looks -- for 17 example, it would be the same thing if he looked 18 on the equity side of the market. 19 Let's say in -- in a split-strike 20 trade. If he looked in -- because IBM trades on 21 the New York Stock Exchange, if you just looked 22 at the volume on the New York Stock Exchange to 23 try and account for that -- for the customer 24 trading, if the customer traded in the 25 over-the-counter market, which is where we trade,</p>	<p style="text-align: right;">Page 108</p> <p>1 Exchange, and he said, well, wait a minute. 2 Nobody trades bonds on the New York Stock 3 Exchange. They trade them in the 4 over-the-counter market. 5 So, you know, that was to me sort of 6 surprising, that anybody would do that. It -- it 7 demonstrated, you know, a total lack of 8 understanding. 9 Again, this is not -- I don't want to 10 be unfair to the man. I've had 50 years of 11 experience dealing in things like this, where 12 people who, you know, understand -- I wouldn't 13 understand how lawyers operate. 14 Okay. So if you asked me how I'm 15 supposed to give a deposition or anything else, I 16 would not know. Of course, now I'm becoming an 17 expert on that also, but it would not be -- I 18 wouldn't -- you know, it wouldn't mean that -- 19 I'm not saying Dubinsky is not a smart 20 guy. He may be a very smart guy. He -- his CV 21 is very good, but I've -- I've dealt with tons of 22 people that are smart people and are experienced 23 people, but, you know, it's like a brain surgeon 24 going to a dentist for -- to have a brain surgery 25 done.</p>
<p style="text-align: right;">Page 107</p> <p>1 and where everybody else trades today, where it 2 used to be 99 percent of the market, as I said 3 earlier, traded on the floor of the exchange, now 4 ten percent trades on the floor of the exchange, 5 and the rest of it trades everywhere else. 6 And the convertible bonds have always 7 been that way. In other words, so that Dubinsky 8 looks at the -- in order to say, well, Madoff 9 says he bought 200 bonds for a client. 10 Now, I'm looking on -- you know, in his 11 report. He -- he looks on the New York Stock 12 Exchange, and clearly he sees that that doesn't 13 match. 14 He's ignoring the over-the-counter 15 market. Even though in one of his examples it 16 says the bond trading on the New York, and then 17 it also says OTC market. 18 But bonds -- that was the price range 19 he was trying to establish in that. There is -- 20 if you spoke to anybody that knew anything -- you 21 know, and I'm not trying to be -- I'm not trying 22 to, you know, be sarcastic with him, but if you 23 spoke to any other person, you know, that -- that 24 understood how the markets work, and you said, 25 I -- I just looked at the New York Stock</p>	<p style="text-align: right;">Page 109</p> <p>1 All right. So, to get back to your 2 statement, his -- his lack of understanding how a 3 confirmation in a dealer market works, which is 4 clearly a mistake, or where the volume were 5 traded is another mistake. 6 He -- he goes on to make another 7 mistake when he talks about the price range. 8 Now, that's a little bit more complicated. Now, 9 all of our transactions are -- are what's called 10 average price transactions. 11 If you look on the back of my 12 confirmation -- I'm going to take this for a 13 second again -- it states, "Customer equity 14 transactions" -- because this is an equity, being 15 it says -- so it doesn't matter. It would be the 16 same thing with bonds. 17 It says, "As per your authorization and 18 instructions, we have executed this transaction 19 for your account." 20 All right. It says, "Unless stated 21 otherwise on the front of this confirmation, the 22 trade price of your transaction is an average 23 price and includes a commission equivalent of 24 four cents per share markup. Full details of 25 this transaction on request."</p>

28 (Pages 106 - 109)

<p style="text-align: right;">Page 110</p> <p>1 In other words, an average price 2 transaction is when we buy stock for a customer 3 or, you know, we buy stock. We -- we may start 4 buying the stock on a Monday, and we may buy that 5 Monday, Tuesday, Wednesday, Thursday, Friday. So 6 we may buy a -- 1,000 shares over a period of 7 three days, four days or five days. 8 We start on a Monday. We may finish on 9 a Friday. That's typically because we're buying 10 a large amount of bonds or stock for a client. 11 And we may start buying the -- let's say, the 12 bond at 98, and then we may wind up paying 100 by 13 the time Friday is, because as the market moves. 14 So we're accumulating stock, a number 15 of shares or bonds, over an average number of 16 days at an average price. 17 So if we start buying a bond, let's 18 say, at 98, and we wind up finishing buying it at 19 100, as the market moves up, we bought stock -- 20 the bonds at 98, 99, 99 and a quarter and so on 21 and so forth. 22 When we report the trade for the 23 customer on Friday, which is when we're finished, 24 we may have paid 90 -- 99 and three-quarters on 25 the bond. All right. What Dubinsky -- you know,</p>	<p style="text-align: right;">Page 112</p> <p>1 of the confirmation, which he probably never did, 2 you know, it clearly states that these are 3 average price transactions. They're not one 4 price. 5 Okay? We're -- 6 MR. SHEEHAN: I just have a little 7 housekeeping. 8 MS. CHAITMAN: Yeah. 9 MR. SHEEHAN: I'd like -- he read from 10 that. I'd like to get that marked. That. 11 MS. CHAITMAN: This -- this marked. 12 MR. GOLDMAN: The photocopy. 13 MR. SHEEHAN: And his notes too. He's 14 reading from notes. 15 THE WITNESS: This is just -- 16 MS. CHAITMAN: That page. Okay. Good. 17 Okay. So I'm going to mark as Exhibit 9, this is 18 a page from the volume that we've just described. 19 It's page 323. 20 MR. SHEEHAN: Great. And I think he 21 had his notes that he was reading from too. 22 So -- 23 MS. CHAITMAN: Did you have notes that 24 you were reading from? 25 MR. SHEEHAN: Yeah.</p>
<p style="text-align: right;">Page 111</p> <p>1 that was the average that we accumulated for the 2 customer. 3 Now, the 99 and three-quarters was 4 bought over a period of three days. If -- if you 5 look at -- if he looks at the price, the range of 6 the stock, the price on the day that appears on 7 the confirmation, it may show 100, which was 8 where this -- the closing price was on that day. 9 All right. But, you know, we may -- we 10 may sell it to the customer at 99 and 11 three-quarters, which was the average price of 12 that stock. He -- he thinks that that's a 13 mistake. 14 How could we have bought the stock for 15 the customer at 99 and three-quarters, when it 16 shows that -- it shows that the cheapest price 17 the stock traded was 100. 18 So he's saying that Madoff is -- is 19 buying stock cheaper than he could have bought it 20 in the marketplace. He's not accounting for the 21 fact that we started buying it, you know, three 22 days. 23 In other words, it wasn't -- he thinks 24 it was all bought at one price on that day. 25 Okay. If he -- if he bothered to read the back</p>	<p style="text-align: right;">Page 113</p> <p>1 MR. GOLDMAN: Yeah, there was. 2 THE WITNESS: Where did I put them? 3 MS. CHAITMAN: Were there -- I did mark 4 notes before. Are there new notes? I didn't 5 notice. 6 MR. SHEEHAN: Yeah, there were notes 7 that were part of the -- 8 THE WITNESS: Here they are. 9 MS. CHAITMAN: Okay. 10 MR. GOLDMAN: There they are. 11 MS. CHAITMAN: Can I mark that? 12 THE WITNESS: You can have it, but it's 13 my only copy. Okay. I am not finished with it 14 yet. So don't -- don't take it. 15 MS. CHAITMAN: No. I'm not taking it. 16 (MADOFF EXHIBIT 9 WAS MARKED FOR 17 IDENTIFICATION.) 18 MS. CHAITMAN: I'm going to mark as 19 Exhibit 10 some handwritten notes that Mr. Madoff 20 has been referring to, and I'm going to give it 21 back to Mr. Madoff. 22 (MADOFF EXHIBIT 10 WAS MARKED FOR 23 IDENTIFICATION.) 24 MR. SHEEHAN: For the record, there's 25 notes on the back of that page too.</p>

29 (Pages 110 - 113)

<p style="text-align: right;">Page 114</p> <p>1 MS. CHAITMAN: Yeah, yeah. 2 MR. SHEEHAN: That'll be fine. 3 MS. CHAITMAN: But it's all one 4 exhibit. 5 MR. SHEEHAN: Yes. It is one exhibit. 6 MS. CHAITMAN: Yeah. 7 THE WITNESS: Okay. So -- 8 BY MS. CHAITMAN: 9 Q. So let -- just to catch up. One mistake he 10 made was not understanding that on the trade 11 confirmations it -- Madoff -- the firm is buying -- if 12 it says, "bought," it means Madoff, the firm, bought? 13 A. It means that -- it means -- yes. The, 14 "we," refers to the firm, Madoff, bought from the 15 customer or sold to the customer. 16 Q. To the customer. Okay. And -- and sold 17 from the firm's own inventory? 18 A. That's correct. 19 Q. Okay. And then you've made the point that 20 Dubinsky looked for confirmation of the volume on the 21 New York Stock Exchange or the London Stock Exchange, 22 and, in fact, the convertible bonds were not sold on 23 the -- you didn't buy them on the -- 24 A. We traded in the over-the-counter market. 25 Q. Right.</p>	<p style="text-align: right;">Page 116</p> <p>1 convertible bond exists, you would never buy the 2 stock, as opposed to buying the bond, if you could buy 3 the bond at a discount. 4 In other words, a convertible bond trade -- 5 a convertible bond -- let's say a bond is convertible 6 into 100 shares of stock at \$10 a share. All right. 7 The -- the convertible bond always should trade at a 8 premium above what it's convertible into the price of 9 the stock at, because it has a coupon attached. It 10 pays interest. 11 So convertible bonds typically trade at a 12 premium. In other words, the bond theoretically would 13 be worth 100 based upon the price of the stock at ten. 14 The bond should always trade above 100. 15 It should trade at 101, 100 and a half and 16 so on, because of the fact that the convertible bond 17 is always -- is always going to be worth more than the 18 stock, you know, because of the coupon that it has to 19 it. 20 So convertible bonds sometimes trade at a 21 discount, but rarely. Usually they trade at a 22 premium. All right. When you combine a bond at -- a 23 convertible bond at a -- at a discount, you could 24 theoretically buy the bond, let's say, at 98, when it 25 really should be selling at 100.</p>
<p style="text-align: right;">Page 115</p> <p>1 A. And there was not even volume reported -- in 2 the days -- the period of time he's looking for there 3 was no volume -- actually, the majority of the volume 4 was never reported in the over-the-counter market, 5 because there was no volume requirements to report 6 volume in bonds in the over-the-counter market until a 7 later date. 8 Q. Okay. Do you -- 9 A. It was very -- it was a very -- I don't -- 10 it was very hazy, the -- the volume reporting 11 requirements on -- on bond -- in the bond market was 12 never really -- it was that way -- to this day it's 13 sort of a gray area. 14 Q. Okay. All right. Now -- now you want to 15 go -- do you have another area that you want to cover? 16 A. We've covered the confirmations and the 17 statements, and we've covered the volume, and we've 18 covered the price. So basically what I'm saying is 19 his -- his criticism of the price of the volume and of 20 the confirmations and statements are inaccurate. 21 Q. Now, Mr. Dubinsky says that there's no proof 22 that the bonds were converted. 23 A. Okay. A -- the -- the typical strategy on 24 convertible bonds is not to convert. In other words, 25 nobody in their right mind should ever -- if a</p>	<p style="text-align: right;">Page 117</p> <p>1 All right. Because you could buy the bond 2 at 98. Sell the stock at ten. Would be -- you'd make 3 a two point profit by converting it. So ideally you 4 would say, okay. If you -- because then you'd have no 5 risk. 6 You'd immediately buy the bond at a 7 discount, sell the common stock simultaneously at a 8 profit, and then convert one into the other. You 9 exchange the bond by selling -- sending it to the 10 conversion agent and say, here is your bond back. You 11 know, I want stock back. And then you'd deliver the 12 stock out, and you'd make a profit. 13 But most bonds trade at premiums, which is 14 what they shouldn't be doing. All right. So the 15 typical strategy of a convertible bond trader would be 16 to -- to buy the bond either at a discount, which 17 allows you to convert it immediately and make a 18 profit, or hold the bond open and wait for the bond to 19 go to a premium, where it historically should trade 20 at, and then you sell out the bond, cover the stock 21 and un -- what's called unwinding the transaction. 22 Which Dubinsky in his report does state that 23 that is one of the -- he has that right. That that is 24 the -- you do that kind of trading, you know, either 25 buying it and converting it or unwinding the</p>

<p style="text-align: right;">Page 118</p> <p>1 transaction. He acknowledges -- he has that -- that</p> <p>2 part right.</p> <p>3 He doesn't go into the fact that most bonds</p> <p>4 should not be converted, but anybody that is familiar</p> <p>5 with convertible bond trading would know that.</p> <p>6 All right. The -- so what Dubinsky then</p> <p>7 does is he says that Madoff, you know, who -- who did</p> <p>8 buy bonds at a discount and sell the stock, you know,</p> <p>9 accordingly, it had a locked-in profit, he never</p> <p>10 physically converted -- he never sent the bonds in to</p> <p>11 be converted, you know, and take the profit that way,</p> <p>12 which he should have -- he should have done, you know.</p> <p>13 But he said, there's no evidence that he</p> <p>14 ever put the bonds into conversion, because typically</p> <p>15 he would have found in our records, he assumes, some</p> <p>16 sort of instructions to the conversion agent to</p> <p>17 convert the bonds into stock.</p> <p>18 All right. And if, in fact, we did that, he</p> <p>19 would -- he would find those instructions, but our</p> <p>20 strategy, as he acknowledges, as most people's</p> <p>21 strategy would be, to -- to not convert. He doesn't,</p> <p>22 you know, really go into the details of that.</p> <p>23 So our strategy is basically buy the bond,</p> <p>24 sell the stock. And even though we have a profit and</p> <p>25 could convert it and lock in the profit, is we don't</p>	<p style="text-align: right;">Page 120</p> <p>1 not unique to us. We happened to do more of it than</p> <p>2 most people.</p> <p>3 All right. So our goal was to not convert.</p> <p>4 It was -- it was basically to unwind the transaction.</p> <p>5 All right. So because he -- he could never see that</p> <p>6 we were actually converting, and -- and he did find</p> <p>7 some that we converted, but not -- you know, but there</p> <p>8 were instances -- he made the assumption that we would</p> <p>9 always convert, and that -- that's totally untrue.</p> <p>10 All right. Because what we would do would</p> <p>11 be when -- when the premium went to where we expected</p> <p>12 it to go to, we would, what's known as, unwind it or</p> <p>13 swap the transaction, which another dealer that had</p> <p>14 the transaction.</p> <p>15 The problem -- the customer would make -- he</p> <p>16 could make more money theoretically, you know, within</p> <p>17 what we -- than what he made had we actually converted</p> <p>18 it. He could make a greater profit or he could make</p> <p>19 the same profit. It didn't matter.</p> <p>20 But as a dealer our goal was to keep bonds</p> <p>21 out of conversion, because the more you kept the bonds</p> <p>22 out of conversion, you kept them open in the</p> <p>23 marketplace to trade at a -- at a future time.</p> <p>24 So -- because once you convert a bond it's</p> <p>25 out of existence any longer. So the goal of all</p>
<p style="text-align: right;">Page 119</p> <p>1 convert it. We hold it open, and then we undo the</p> <p>2 whole transaction when the premium goes back to where</p> <p>3 it should be.</p> <p>4 As a matter of fact, when David Kugel was</p> <p>5 first hired by me his job was to track all of the</p> <p>6 convertible bonds that traded in the marketplace. And</p> <p>7 we had a -- a whole spreadsheet that -- that we</p> <p>8 developed for him that tracked what every bond that</p> <p>9 was trading in the marketplace historically traded at.</p> <p>10 So it would look and see that -- let's say</p> <p>11 IBM bonds traded over this past two years always went</p> <p>12 to a two point premium. It always traded at a two</p> <p>13 point premium.</p> <p>14 You know, every now and then it -- it would</p> <p>15 go to a -- a discount or a one point premium, and</p> <p>16 then, you know, it would go back to that premium. So</p> <p>17 we would track them historically.</p> <p>18 And we would always look to see when the</p> <p>19 bond was -- you know, was changing its relationship.</p> <p>20 And then we would go into the marketplace and buy</p> <p>21 those bonds. And that's what all convertible bonds</p> <p>22 traded, but that was our specialty, was trading this</p> <p>23 way.</p> <p>24 All right. But anybody that was a good</p> <p>25 convertible bond trader did the same thing. It was</p>	<p style="text-align: right;">Page 121</p> <p>1 traders is to keep these bonds in circulation. So you</p> <p>2 could --</p> <p>3 It would be like if a customer -- if</p> <p>4 everybody took the stock that they bought, and they --</p> <p>5 and they -- the company bought back more of their</p> <p>6 stock, when a company, like IBM, buys back their stock</p> <p>7 in the marketplace, they're taking it out of existence</p> <p>8 anymore. Nobody can trade that stock. So everybody</p> <p>9 wants to keep these bonds in circulation.</p> <p>10 All right. Now, another mistake that he</p> <p>11 makes is if, in fact, we did convert -- you know, he</p> <p>12 makes the assumption that we would physically put the</p> <p>13 bonds ourselves into conversion, which, you know, I</p> <p>14 can understand him thinking that we would do that.</p> <p>15 All right. But he makes the assumption that</p> <p>16 because he didn't see any instructions from Madoff to</p> <p>17 the conversion agent, that we didn't convert.</p> <p>18 What he seems to not understand, which I can</p> <p>19 understand him not understanding, is we had -- he</p> <p>20 thinks our only bank was J.P. Morgan and Bank of</p> <p>21 New York, which -- in the 2000's those were our main</p> <p>22 banks.</p> <p>23 J.P. Morgan was our primary bank when we</p> <p>24 were dealing with customers in split-strike, and our</p> <p>25 operating bank when we were dealing with our</p>

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<p style="text-align: right;">Page 122</p> <p>1 market-making and dealer in -- in general, doing 2 hundreds of thousands of trades, were handled through 3 Bank of New York, which was our operating bank. 4 All right. In the period that he's looking 5 at the convertible bonds in the '70s and the '80s, we 6 had -- our banks were Chase Manhattan Bank, 7 Continental Bank, Commercial Bank of North America, 8 Meadowbrook National Bank, Marine Midland Bank. 9 You know, we also had clearing arrangements 10 with -- with Barclays, with Carlo LaBorde (PHONETIC) & 11 Company, Edwards & Hanley (PHONETIC) and others. In 12 other words -- 13 Q. Bear Stearns? 14 A. Huh? 15 Q. Bear Stearns? 16 A. Bear Stearns. So he like -- he doesn't see 17 any of that, because he wouldn't. He's looking at -- 18 you know, in the -- in the more recent period those 19 banks have already been merged out or don't exist any 20 longer. 21 You know, when we -- when we did convert 22 bonds -- and we did convert bonds, you know. We 23 didn't -- you know, the -- the majority of what we 24 unwound, but we looked -- when we did convert a bond, 25 we would convert the bond through one of those agents,</p>	<p style="text-align: right;">Page 124</p> <p>1 All right. As opposed to when we developed 2 a clearing corporation, meaning the National 3 Securities Clearing -- Clearing Corporation, NTTC, you 4 know, we would -- they would clear the whole 5 transaction. 6 So it would -- you know, of course, the 7 industry -- another thing I got blamed for was 8 founding the clearing corporation, because Wall Street 9 cleared all of their transactions through basically a 10 couple of major banks, like Citicorp, Chase and so on. 11 Nobody -- they handled -- they -- brokerage 12 firms themselves didn't all have the facilities -- 13 back office facility. So a bank used to clear those 14 trades for them. The banks -- that was a great 15 business for banks. 16 So the industry, because of the paperwork 17 crisis, decided they had to have a -- they had to have 18 a clearing corporation developed to clear the trades 19 for the industry. 20 The major banks in the United States went 21 crazy with that concept, because they wanted to keep 22 all of the business themselves. They wanted brokerage 23 firms to be required to -- to use the banks to clear 24 the transactions rather than have a clearing 25 corporation.</p>
<p style="text-align: right;">Page 123</p> <p>1 like Commercial Bank of North America, because if the 2 bank's conversion agent was in Chicago, and we wanted 3 to convert it, we would have -- we would have had 4 to either send somebody out to Chicago or a messenger 5 to convert the bond or mail it and hope that the 6 mail -- the bonds actually got there. 7 You would never do that. You would -- you 8 would give it to a bank, you know, and the bank would 9 convert it for you. So we would give it to the 10 Commercial Bank of North America. 11 They had -- they were a large clearing bank, 12 and they would physically convert it with arrangements 13 through whoever the conversion agent was doing that. 14 All right. He doesn't -- he has no way of 15 knowing that, because those banks weren't -- he 16 doesn't even know those banks existed when they were 17 there. So the banks themselves, which we would 18 convert, would -- would draft out. 19 It was the same thing like when we would 20 deliver -- before we formed the clearing corporation 21 on equities, if you sold stock to a brokerage firm in 22 Chicago, in order to get paid for that you would have 23 to mail that stock to Chicago and hope that they sent 24 you a check while the bank -- you know, when they 25 finally got it.</p>	<p style="text-align: right;">Page 125</p> <p>1 But finally we -- you know, the SEC put 2 enough pressure on people to develop a clearing 3 corporation. So we formed the National Securities 4 Clearing Corporation, which I became the chairman of. 5 And then we merged also Depository Trust 6 into that. So that brokerage firms would send their 7 deliveries of stocks rather than through the mail, 8 where you have to use the bank to do that, to use a 9 clearing corporation, which settled all of the trades 10 for the whole industry. 11 So what -- what happens today -- I'm telling 12 you more than you probably are interested or wanting 13 to know, but if I -- I may buy stock -- you know, sell 14 10,000 shares to Merrill Lynch and 10,000 shares to 15 someone else and so on and so forth. 16 And buy and sell all day long with -- you 17 know, like we did hundreds of thousands of 18 transactions as -- as the report points out. The 19 clearing corporation nets all of these transactions, 20 you know, among the Wall Street brokerage firms. 21 And at the end of the day they net out -- I 22 may have bought and sold a million shares during the 23 day, but the net comes out to 500 shares between all 24 my buys and sells. 25 They send me a bill at the end of the day</p>

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1 that I either have to pay on the 500 shares or get a
2 check for the 500 shares of stock. And all of the
3 banks went out of the clearing business, and now it's
4 all handled by the National Securities Clearing
5 Corporation Depository Trust.
6 Q. Okay. I want to go back, because that's one
7 of the things that Dubinsky talks about, that he can't
8 find trade confirmations. Now, we're dealing with --
9 A. So --
10 Q. -- the convertible arbitrage strategy --
11 strategy in the 1980s.
12 THE COURT REPORTER: Can I ask for a
13 break?
14 MS. CHAITMAN: Of course. Of course.
15 THE VIDEOGRAPHER: Going off the
16 record. The time is 12:09.
17 (RECESS FROM 12:09 P.M. TO 12:16 P.M.)
18 THE VIDEOGRAPHER: Back on the record.
19 The time is 12:16.
20 THE WITNESS: Okay. So I think we were
21 at the -- the clearing of -- oh, so that his
22 inability to find instructions to convert bonds,
23 you know, all the time was that he was not aware
24 of the fact that if we did convert bonds we had
25 the ability and did convert bonds through other

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1 clearing -- other clearing banks.
2 BY MS. CHAITMAN:
3 Q. So that you wouldn't have the records for
4 that?
5 A. Wouldn't -- they would not exist, because
6 there would be no way that we would put the bonds
7 physically for the most part -- we did some -- some of
8 them, depending upon what the year it was and what he
9 was looking for, but, as I say, the idea was not to --
10 to actually convert, but --
11 Q. Right.
12 A. -- to arrange a swap arrangement --
13 Q. Right.
14 A. -- or a clearing arrangement.
15 Q. Okay. Now, he also makes the point that he
16 couldn't find trade confirmations.
17 A. Okay. That -- when -- one of the times
18 that -- when you first came down, if you still
19 remember --
20 Q. And when you say, "you," are you --
21 A. Meaning David Sheehan --
22 Q. Sheehan.
23 A. -- and his staff of attorneys came down
24 here. I think it was at that time that they mentioned
25 to me that they could not find confirmations --

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1 counterparty confirmations on transactions.
2 So -- and we were buying and selling stock
3 through other brokerage firms for clients. They
4 expected us to -- they saw that we had confirmations
5 selling and buying stocks from the customer, but they
6 did not find any confirmations to the broker.
7 All right. Now, number one, if we were
8 dealing as principal, which clearly our confirmations
9 stated, and we always did it as principal, we would --
10 there wouldn't be a counterparty on the other side of
11 the trade, because we were the counterparty on the
12 other side of the trade.
13 But when we did go out into the street to
14 buy the stock, you know, there would be a
15 counterparty, you know, on the other side of the
16 trade. He couldn't find the confirmation. So he saw
17 thousands of confirmations with clients, but he never
18 saw any broker confirmations, period.
19 So he said to the -- you weren't buying and
20 selling stock from anywhere. You know, there were no
21 confirmations. And I looked at him, and I said, well,
22 no. You know, I was sort of -- didn't understand the
23 question, because I didn't understand why he expected
24 there to find confirmations.
25 Q. When you say, "him," to whom are you

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1 referring?
2 A. The trustee.
3 Q. Okay.
4 A. And -- so it was that -- you know, I then
5 realized that, you know, he expected to find -- you
6 know, just as he found a broker confirmation, he
7 assumed that every time we went and sold or bought
8 stock from a customer we bought it from another
9 broker, which sometimes we did.
10 Sometimes we bought it out of inventory. If
11 it was bought out of inventory, there wouldn't be --
12 there would be a customer confirmation at an earlier
13 date that -- that we put it into our inventory, but --
14 All right. But, I said, there -- there are
15 no confirmations. And that sort of went on deaf ears.
16 Now, number one, I said, first of all, you're looking
17 at -- we don't -- we don't keep any records of
18 customer confirmations from the past six years.
19 I said, the record retention period for the
20 industry is six years. So after six years everybody
21 gets rid of all of their records. You can imagine, we
22 do hundreds of thousands of trades everyday.
23 If we -- if we kept paperwork for all of
24 those transactions, you know, it would be impossible.
25 I said, so we keep customer confirmations for, you

<p style="text-align: right;">Page 130</p> <p>1 know, a longer period of time, because customers need 2 that for tax purposes, audits and so on and so forth. 3 But a general policy, we don't keep records 4 for more than six years, because that's what the 5 record retention period does. Even though we did have 6 records, because -- and I used to always yell at my 7 people. 8 I used to say, after six years, get rid of 9 everything, because I'm paying for storage on this 10 stuff. But I said, wait a minute. I said, you 11 won't -- you won't find confirmations for any of my 12 trades. 13 I said, I do hundreds of thousands of 14 shares -- of trades everyday. I said, you don't 15 find -- you can't find any of those confirmations. I 16 said, so are you now assuming because you can't find a 17 confirmation when my market-makers or proprietary 18 traders bought hundreds of thousands of trades 19 everyday that those trades didn't take place either? 20 And there was no answer. I said, first of 21 all, are you aware of the fact that brokers stopped 22 issuing confirmations years ago? 23 Q. How -- 24 A. Because of the clearing corporation. 25 Q. How many years ago?</p>	<p style="text-align: right;">Page 132</p> <p>1 that they have to get somebody that explains that. 2 Now, certainly Dubinsky would know that, but 3 he doesn't even mention -- in fairness to Dubinsky, he 4 doesn't -- he doesn't mention anything about this 5 confirmation issue, because he clearly knows that 6 much. 7 This was the trustee, Irving Picard, and his 8 attorneys, or, I guess, and David's partners or 9 whatever. And maybe they had no reason to know that 10 either, because the average person would not know 11 that. 12 Q. When did the continuous net settlement 13 system come into place? Was it in place in the '80s? 14 A. Yes. Probably in the '80s. 15 Q. Okay. 16 A. So -- 17 Q. So how -- how does that work? At the end of 18 the day you just get a computerized printout -- 19 A. Right. 20 Q. -- with -- with the net amount that you have 21 to sell -- 22 A. Right. 23 Q. -- or receive? 24 A. Right. 25 Q. Okay. Okay. And if you were doing</p>
<p style="text-align: right;">Page 131</p> <p>1 A. Well, there's what's called a continuous net 2 settlement, which I started to say. In other words, 3 when we buy and sell stock all day long, anybody buys 4 and sell stocks when they're long, they don't issue a 5 counterparty confirmation to Merrill Lynch, because 6 those trades are reported automatically through the 7 clearinghouse, and you get -- you don't get 8 confirmations. 9 Customers get -- confirmations get mailed 10 out back and forth, but the industry does not issue 11 confirmations to each other, you know, as a general 12 rule. You can, if you want, but nobody would do that. 13 So I said, so making your supposition that 14 you can't find a confirmation from a brokerage firm on 15 the other side of a customer trade, and you can't 16 find -- you won't find a confirmation on the other 17 side of a - of a non-customer trade either, because 18 they don't -- I don't have any customer confirmations 19 in my records. 20 I said, how can you not understand that? 21 Now, maybe -- like my lawyers -- you can't expect him 22 to understand. They're lawyers. They're not 23 brokerage firms. 24 I said, all right, but you're asking me 25 questions -- you know, they're asking me questions</p>	<p style="text-align: right;">Page 133</p> <p>1 over-the-counter purchases and sales of subordinated 2 bonds, convertible bonds -- 3 A. Yeah. 4 Q. -- was that done on a continuous net 5 settlement basis also? 6 A. No. 7 Q. How was that done? 8 A. It was just -- it was -- you wouldn't issue 9 a confirmation. It was -- well, it depends -- you 10 want to know about a convertible bond for a -- for a 11 claim? 12 Q. When you were doing the investment -- I'm 13 focusing on the 1980s. 14 A. Right. 15 Q. The convertible arbitrage transactions. 16 A. Uh-huh. We wouldn't have -- there wouldn't 17 be -- it -- we would issue, you know, a -- we would 18 issue a confirmation there, but we wouldn't have those 19 in our records in the '80s, because we don't hold the 20 confirmations after six years. 21 Q. Right. And the -- if you were -- you were 22 selling to the customer, you had a confirmation, but 23 when you were buying it -- 24 A. There wouldn't be a confirmation. 25 Q. -- for inventory, there wouldn't be a</p>

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<p style="text-align: right;">Page 134</p> <p>1 confirmation?</p> <p>2 A. No. Not -- not after six years.</p> <p>3 Q. Okay. Okay. So we're -- we're going -- we</p> <p>4 started out listing the mistakes that you felt --</p> <p>5 A. Right.</p> <p>6 Q. -- Dubinsky made. Did he make a mistake</p> <p>7 with respect to using the trade date versus the</p> <p>8 settlement date; is that what you covered already?</p> <p>9 A. The average price. Yes.</p> <p>10 Q. Okay.</p> <p>11 A. On the ranges?</p> <p>12 Q. Yeah.</p> <p>13 A. Well, it's -- if you look at the range on --</p> <p>14 you wouldn't have -- there wouldn't be a -- there</p> <p>15 wouldn't be a record of the ranges.</p> <p>16 Well, first of all, you can't even use the</p> <p>17 ranges, because you'd have to -- well, he -- in order</p> <p>18 to -- in order -- in other words, if the SEC was doing</p> <p>19 an audit, which they did all of the time as to, you</p> <p>20 know, best -- what's called best execution, they would</p> <p>21 actually look and see, you know, what dates you bought</p> <p>22 this stock.</p> <p>23 Okay. You know, if it was an average price</p> <p>24 transaction, they would have to go back and look at</p> <p>25 all of the days, you know, that you accumulated the</p>	<p style="text-align: right;">Page 136</p> <p>1 mistakes that you can recall from --</p> <p>2 A. Well, we -- he mentions that David -- well,</p> <p>3 he talks about David Kugel as -- you know, he mentions</p> <p>4 in the report that David Kugel -- in other words, he</p> <p>5 acknowledges that they don't have records going back</p> <p>6 to the time that David -- he's talking about David</p> <p>7 Kugel, because we don't -- there are no records.</p> <p>8 So he's -- he points out as a footnote that</p> <p>9 he's using David Kugel's information to plea bargain</p> <p>10 that he created fictitious trades. Now, as I stated</p> <p>11 before, that makes no sense to me at all.</p> <p>12 And I think that David Kugel -- I'm not</p> <p>13 even -- I'm not saying that he's lying. I'm saying</p> <p>14 that he misinterpreted -- what he said when he created</p> <p>15 a trade, he's misinterpreting what he's saying.</p> <p>16 In other words, if -- if -- if I -- if I</p> <p>17 give instructions to -- you know, if I wanted -- if I</p> <p>18 decide I want to sell stock to a customer out of my</p> <p>19 inventory, I -- I could say to someone like David</p> <p>20 Kugel, you know, I want to sell stock to -- I want to</p> <p>21 sell, you know, IBM to the client.</p> <p>22 So we have 100 bonds in -- 100 convertible</p> <p>23 bonds in the account. I want to sell to Carl Shapiro,</p> <p>24 you know, 20 bonds. You know, I want to do a</p> <p>25 convertible trade for him.</p>
<p style="text-align: right;">Page 135</p> <p>1 stock, not just use the last day that you reported the</p> <p>2 trade to the customer, because they understand what an</p> <p>3 average price is.</p> <p>4 Now, the only ones -- typically if you call</p> <p>5 up a broker, and you tell him, buy me, you know, 50</p> <p>6 shares of IBM or 200 shares of IBM, they would</p> <p>7 actually -- they wouldn't do that over the course of a</p> <p>8 day.</p> <p>9 All right. Because that -- you know, they</p> <p>10 would just buy -- it's a small amount of a lot, but if</p> <p>11 you're dealing with -- with discretionary accounts or</p> <p>12 you're accumulating a larger -- with a -- a portfolio</p> <p>13 of accounts, the way we always traded, you would</p> <p>14 always do an average price transaction.</p> <p>15 So they -- what they would have to do is go</p> <p>16 back, which they would do, and see what was your real</p> <p>17 average price. They would verify what the average</p> <p>18 price was, not just look at the last day, because they</p> <p>19 would realize that you would never be able to find</p> <p>20 a -- you would rarely be able to find a match, because</p> <p>21 you'd --</p> <p>22 Q. Right.</p> <p>23 A. -- have done it, you know, at different</p> <p>24 periods of time.</p> <p>25 Q. Right, right. Are there other general</p>	<p style="text-align: right;">Page 137</p> <p>1 Give instructions, you know, to Annette to</p> <p>2 buy, you know, convertible bond, you know, for -- for</p> <p>3 Carl Shapiro, and, you know, just tell her what --</p> <p>4 tell them what the formula -- what the formula is, so</p> <p>5 she knows how many bonds -- how to set the trade up.</p> <p>6 He -- you know, he would write these</p> <p>7 instruction sheet -- this -- this convertible bond,</p> <p>8 you've got to -- if you're going to do 50 bonds, you</p> <p>9 know, this is -- this is how many bonds, and this is</p> <p>10 how much stock you sell.</p> <p>11 And it gives her like -- she then looks at</p> <p>12 my inventory record and sees, okay. He -- he has X</p> <p>13 number of bonds he can convert. Takes it out of --</p> <p>14 out of the investment account or the firm's trading</p> <p>15 account into this customer account.</p> <p>16 So David Kugel has no idea, nor has any</p> <p>17 other trader, what the -- what the firm's net</p> <p>18 inventory. We could have -- we could have -- we have</p> <p>19 five different traders trading IBM convert. They're</p> <p>20 all competing with each other.</p> <p>21 They don't want to -- they never want David</p> <p>22 to know what his position is, because he -- you know,</p> <p>23 they're competing with him. That's part of the</p> <p>24 strategy of the firm, all market-making firms.</p> <p>25 So he -- if -- if -- if someone says, well,</p>

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<p style="text-align: right;">Page 138</p> <p>1 give them instructions, he'll give -- he'll give 2 Annette or Jodi instructions of how many bonds to -- 3 to buy and sell for this customer. 4 He has no idea after that where that -- 5 where it's coming from. He doesn't know whether it's 6 coming from the firm's inventory, from his inventory 7 or someone else's inventory. He would not know that. 8 So if -- if he says to somebody, which is a 9 very -- I'm going back to like when I told in my 10 proffer agreement that I short stock to a customer. 11 And they said, you sold stock to a customer? How can 12 you short stock a customer? You're selling them stock 13 that you don't own. 14 And I say, yeah, market-makers do that all 15 day long. That's part of our business. We're 16 shorting stock to a customer. And he -- and an alarm 17 bell goes off and says, well, how can you sell stock 18 to a customer you don't own? 19 Q. Okay. Well, that -- 20 A. You know -- 21 Q. Let me ask you that. 22 A. Okay. 23 Q. Was that illegal, for you to be selling 24 stock to a customer that you didn't own? 25 A. No. I'll -- I'll -- I'll explain that too,</p>	<p style="text-align: right;">Page 140</p> <p>1 short to a customer. 2 And I can prove that to you, because I don't 3 know how many times, you know, I had to -- I had to 4 argue this case in front of the SEC and with the 5 issuing companies, like Apple computer and everything 6 at -- when we were at board meetings with the IBM. 7 Average company does not want you to ever 8 short stock. In other words, every company that 9 trades on an exchange does not want a brokerage firm 10 to sell stock that he doesn't own. 11 They think that short selling is illegal, is 12 immoral and should never be done. All right. That's 13 what they want. They don't want ever -- they don't 14 want anybody to be able to short stock. 15 Just like nobody wanted, you know, George 16 Soros to short Sterling and make a billion dollars 17 shorting -- you know, breaking the market on -- on 18 shorting. 19 But what they don't understand is that 20 shorting is a very -- you know, a very, you know, 21 legitimate market, you know, thing to do in the 22 marketplace, and it's required, because it keeps 23 stocks from going to artificially high prices. 24 All right. And the -- it certainly happens 25 that as I was -- when I was looking for -- reading</p>
<p style="text-align: right;">Page 139</p> <p>1 because that's -- that's another issue, but let me 2 just finish this thing. 3 So that if, in fact, David Kugel or anybody 4 is -- is giving instructions to the operations side of 5 the business, meaning Annette or Jodi, of -- of how to 6 do a trade, that doesn't mean that's a fictitious 7 trade. 8 He -- you know, he has no idea. He's just 9 telling her how to do the allocation of the trade. 10 Not -- he doesn't know if -- you know, whether or not 11 the firm has it in inventory or doesn't have it in 12 inventory. 13 But even if I wanted to short it to the 14 customer, let's say I didn't have it in inventory, 15 there's nothing wrong with that. I am allowed to 16 short stock to a customer. 17 Theoretically I could have shorted all of 18 these split-strike trades to the customer forever. My 19 violation was not going short. It was not recording 20 the short on my financial records as a liability, 21 which I guarantee you, nobody understands that. 22 To this day if I called up the prosecutor, 23 Litt, and I said to him, you know, I don't have -- 24 there's nothing wrong with me shorting stock. He 25 would look at me and say, that's not true. You can't</p>	<p style="text-align: right;">Page 141</p> <p>1 another book, one of the things I do here is I tutor 2 people on finance and the marketplace. 3 Of course, the Bureau of Prisons only big 4 concern is that I'm teaching them a fraud. All right. 5 So originally I was told, no, you can't tutor or teach 6 anybody here, you know, but I said, listen, I said, 7 they -- you have outside people coming in here, 8 professors, to -- to lecture, you know, as part of, 9 you know, the justice department, and they're all 10 asking, can Bernie Madoff -- you have Bernie Madoff 11 sitting here. Let him lecture people. 12 And the Bureau of Prisons says, the 13 newspapers are going to say that Bernie Madoff is -- 14 is perpetuating a fraud. Just like when they put me 15 in charge -- when I first got here, my first job was 16 in the engraving department. 17 I was engraving signs, you know, that they 18 hung on walls here. So the -- the Wall Street Journal 19 said, Bernie's first job is engraving, you know. So 20 they said, take him away from the engraving 21 department. 22 And they -- I had seven jobs in seven days, 23 because no matter what I was doing, including I was in 24 charge of cleaning the computers, you know, can't do 25 that, you know, because you're reprogramming the</p>

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<p style="text-align: right;">Page 142</p> <p>1 computer.</p> <p>2 I couldn't reprogram my telephone number.</p> <p>3 You know, that's not my -- not my strengths here. So</p> <p>4 I'm now -- my job is now cleaning the laundry room.</p> <p>5 That's my job here.</p> <p>6 The -- I'll -- I'll -- there's a book that</p> <p>7 was written by someone like Dubinsky. He has a very</p> <p>8 big -- and he talks about --</p> <p>9 MR. GOLDMAN: Tell us the name of the</p> <p>10 book and the author, Bernie.</p> <p>11 THE WITNESS: I don't even know what</p> <p>12 it --</p> <p>13 MS. CHAITMAN: May I mark that whole</p> <p>14 thing as --</p> <p>15 THE WITNESS: "Secret Weapon."</p> <p>16 MS. CHAITMAN: -- the next exhibit?</p> <p>17 MR. SHEEHAN: Could you just mark it as</p> <p>18 an exhibit?</p> <p>19 MS. CHAITMAN: Yeah. Let me just mark</p> <p>20 it.</p> <p>21 Can I mark this whole thing?</p> <p>22 THE WITNESS: Yeah.</p> <p>23 MS. CHAITMAN: Is it all connected?</p> <p>24 THE WITNESS: Yeah.</p> <p>25 MS. CHAITMAN: Is it all one --</p>	<p style="text-align: right;">Page 144</p> <p>1 capacity he appeared regularly at the SEC and served</p> <p>2 on agency panels."</p> <p>3 And then he quotes them as saying, "When it</p> <p>4 came to Bernie, people paid more attention, said</p> <p>5 Georgetown University law school professor, Donald</p> <p>6 Langevoort, who worked on an SEC panel with Madoff."</p> <p>7 He quoted -- then goes on to quote, saying,</p> <p>8 "This was a guy who really knew how markets worked.</p> <p>9 He was the grownup in the room. If there was a</p> <p>10 confession" -- "if there was confusion or a question</p> <p>11 or two people on opposite sides going at each other,</p> <p>12 Bernie would speak up and explain what the deal was.</p> <p>13 I'm sure in some ways that may have thrown even the</p> <p>14 commission off their guard."</p> <p>15 "One of Madoff's key accomplishments at the</p> <p>16 SEC was to get a rule approved, the so-called Madoff</p> <p>17 exemption, that allowed market-makers to naked short</p> <p>18 sell. Market-makers are broker-dealer firms that gain</p> <p>19 fees by holding shares of securities in order to help</p> <p>20 grease the wheels of trading."</p> <p>21 "If someone buys stock in a company, it is</p> <p>22 the market-maker who sells the stock and then finds an</p> <p>23 offsetting order. This keeps the markets flowing</p> <p>24 smoothly."</p> <p>25 "In the case of short selling if the</p>
<p style="text-align: right;">Page 143</p> <p>1 THE WITNESS: Yeah, yeah.</p> <p>2 MS. CHAITMAN: Okay.</p> <p>3 THE WITNESS: Anyhow --</p> <p>4 MS. CHAITMAN: So I'm marking as</p> <p>5 Exhibit 11 --</p> <p>6 (MADOFF EXHIBIT 11 WAS MARKED FOR</p> <p>7 IDENTIFICATION.)</p> <p>8 BY MS. CHAITMAN:</p> <p>9 Q. -- a -- it says the author is Kevin Freeman,</p> <p>10 and the title is, "Secret Weapon." And it's pages --</p> <p>11 I don't know what the first page is, but the --</p> <p>12 MR. SHEEHAN: It's the inside cover.</p> <p>13 Q. The inside cover is 78. 78 to 83, and then</p> <p>14 123 and 124.</p> <p>15 A. He's talking about how the markets work. He</p> <p>16 talks about bear runs, and he talks about naked short</p> <p>17 selling, and he talks about the Madoff exemption.</p> <p>18 Q. Is that a term that's in the industry?</p> <p>19 A. Naked -- yeah, naked --</p> <p>20 Q. No, but the Madoff exemption?</p> <p>21 A. Yes. In other words, he goes on to state,</p> <p>22 "Long before he was convicted of defrauding the</p> <p>23 American public of some 50 billion through a Ponzi</p> <p>24 scheme, Bernie Madoff was chairman of the National</p> <p>25 Association of Securities Dealers, NASD. In that</p>	<p style="text-align: right;">Page 145</p> <p>1 market-maker has no inventory of the shares sold, the</p> <p>2 firm is allowed to create an IOU for the shares. This</p> <p>3 is a form of naked short selling legalized by the</p> <p>4 Madoff market exemption."</p> <p>5 Basically what he's stating, this is the --</p> <p>6 he's quoting this law professor at Georgetown, who</p> <p>7 served on a panel with me, that says that I could sell</p> <p>8 stock short.</p> <p>9 So selling stock short, not only is it</p> <p>10 something that is to the benefit of the marketplace,</p> <p>11 market-makers are required to sell stock short. So</p> <p>12 theoretically I don't ever have to, you know, buy</p> <p>13 stock for a customer.</p> <p>14 I'm responsible for producing that stock if</p> <p>15 the customer ever wants it. And any profit that the</p> <p>16 customer makes in the trade I'm responsible for.</p> <p>17 So in theory, which my attorney said to me,</p> <p>18 Bernie, you know, you can -- you're not doing anything</p> <p>19 wrong with being short these split-strike trades to</p> <p>20 the client, you know. You know, I can short all day</p> <p>21 long, and I do short stock at times. Every brokerage</p> <p>22 firm short stocks to a customer.</p> <p>23 My violation was not showing the IOU, the</p> <p>24 liability, you know, on my balance sheet. That's what</p> <p>25 the violation was. I would have also been out of</p>

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<p style="text-align: right;">Page 146</p> <p>1 ratio, you know, by not -- if I did show that. So --</p> <p>2 Q. So you mean that there was -- do you -- if</p> <p>3 you sell short, do you have an obligation -- is it</p> <p>4 your understanding that you have an obligation to the</p> <p>5 customer?</p> <p>6 A. To produce that stock if the customer wants</p> <p>7 it.</p> <p>8 Q. Right, but do you have an obligation -- and</p> <p>9 we're talking about the investment advisory customer.</p> <p>10 A. Yes.</p> <p>11 Q. Did you have an obligation to tell the</p> <p>12 customer, your statement shows 30 shares of IBM, but</p> <p>13 I'm actually short that --</p> <p>14 A. No.</p> <p>15 Q. -- position?</p> <p>16 A. No.</p> <p>17 Q. So it was --</p> <p>18 A. No. You don't -- you're not --</p> <p>19 Q. So if -- if a customer is -- if a securities</p> <p>20 customer is dealing with a market-maker --</p> <p>21 A. Or anybody.</p> <p>22 Q. Well, only the market-makers have the</p> <p>23 exemption.</p> <p>24 A. No, no. That's -- that's wrong. The</p> <p>25 market -- the -- the -- anybody can sell stock short</p>	<p style="text-align: right;">Page 148</p> <p>1 fact, you -- you're not required to sell stock to</p> <p>2 the customer short. You're allowed to sell stock</p> <p>3 to a customer short.</p> <p>4 MR. GOLDMAN: That's --</p> <p>5 THE WITNESS: If -- in other words,</p> <p>6 that's the difference. You have to be -- you</p> <p>7 have to sell it at a price that's related to the</p> <p>8 marketplace, you know.</p> <p>9 And you have to -- you -- you -- you</p> <p>10 would put it on your records that you're selling</p> <p>11 short on the original order ticket. You have to</p> <p>12 mark it, because it's what they call an uptake</p> <p>13 rule and so on, which means you have to -- it's</p> <p>14 not important. It's confusing.</p> <p>15 BY MS. CHAITMAN:</p> <p>16 Q. Okay. So -- so basically if you take John</p> <p>17 Smith. He's a split-strike customer. His statement</p> <p>18 shows that he owns a portfolio of securities, and, in</p> <p>19 fact, you don't at that time own them.</p> <p>20 A. No.</p> <p>21 Q. Are you saying that there's nothing</p> <p>22 fraudulent about issuing a statement to an IA</p> <p>23 customer --</p> <p>24 A. Uh-huh.</p> <p>25 Q. -- an investment advisory customer, showing</p>
<p style="text-align: right;">Page 147</p> <p>1 to a customer, you know. The -- it's -- they always</p> <p>2 can sell stock through shorting, but he --</p> <p>3 You know, what he's talking about is -- you</p> <p>4 know, is that, you know, I was the one that argued for</p> <p>5 the short stock selling, because what he -- he</p> <p>6 confuses the situation, because there are certain</p> <p>7 requirements that a market -- if a market-maker is</p> <p>8 shorting stock to a customer or to anybody, he has</p> <p>9 to -- his records have to show that he shorted the</p> <p>10 stock.</p> <p>11 MR. SHEEHAN: Who is, "he"?</p> <p>12 THE WITNESS: Meaning the brokerage</p> <p>13 firm.</p> <p>14 MR. SHEEHAN: Okay.</p> <p>15 BY MS. CHAITMAN:</p> <p>16 Q. Okay. So the brokerage -- so let's just</p> <p>17 take the split-strike. Okay?</p> <p>18 MR. GOLDMAN: Wait. Before -- before</p> <p>19 you ask the question, I think he said -- and the</p> <p>20 transcript will speak for itself, obviously, but</p> <p>21 I think he said that the -- the market-maker was</p> <p>22 required to sell short. Did you mean permitted</p> <p>23 to sell short?</p> <p>24 THE WITNESS: Well, you -- you're</p> <p>25 required to make a two-sided market. So if, in</p>	<p style="text-align: right;">Page 149</p> <p>1 securities as having been purchased for the customer,</p> <p>2 when, in fact, they haven't been purchased?</p> <p>3 A. That's correct.</p> <p>4 MR. SHEEHAN: Object.</p> <p>5 THE WITNESS: You don't have to --</p> <p>6 you're not required. It's not the customer's</p> <p>7 business whether or not you're selling the stock</p> <p>8 from long or whether you're selling it short.</p> <p>9 BY MS. CHAITMAN:</p> <p>10 Q. Okay. So what you're saying is that the</p> <p>11 fact that the split-strike conversion strategy was</p> <p>12 carried out from sometime in 1992 until December of</p> <p>13 2008 without your actually owning the securities that</p> <p>14 showed up on the statements, that was not a fraud, but</p> <p>15 the fraud was that you didn't disclose to the SEC on</p> <p>16 your focus reports --</p> <p>17 A. That's correct.</p> <p>18 Q. -- that you had that debt?</p> <p>19 A. Right.</p> <p>20 MR. SHEEHAN: Objection. Objection,</p> <p>21 but go ahead.</p> <p>22 THE WITNESS: That's correct.</p> <p>23 BY MS. CHAITMAN:</p> <p>24 Q. Okay. Can you put this in your own words,</p> <p>25 so we don't have any confusion about it? I just want</p>

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<p style="text-align: right;">Page 150</p> <p>1 it to be very clear on the record.</p> <p>2 A. That there is nothing wrong with selling</p> <p>3 stock to a customer out of a short position. In other</p> <p>4 words, you do not have -- that is not a violation.</p> <p>5 The violation -- and it is typical for a brokerage</p> <p>6 firm to at times sell stock to a customer short. That</p> <p>7 is not a violation itself.</p> <p>8 And the customer doesn't care whether the</p> <p>9 stock that you are selling him is stock that you</p> <p>10 actually are long or short. You know, the customer</p> <p>11 assumes, as -- and, rightfully so, that if he wants --</p> <p>12 if wants delivery of those securities, or he wants the</p> <p>13 profit made from the transaction, that you're still</p> <p>14 obligated to do that.</p> <p>15 So had I reported this transaction on my</p> <p>16 financial records as a liability, that would be --</p> <p>17 that would be all right, but because I didn't, that's</p> <p>18 where the violation was.</p> <p>19 Now, obviously, I couldn't do that, because</p> <p>20 my -- my liabilities would have been too great. Which</p> <p>21 brings me to another error, you know, that I find in</p> <p>22 the Dubinsky report. See if I can remember where it</p> <p>23 was. Related to that. The -- well --</p> <p>24 Q. Do you -- do you want -- do you want her to</p> <p>25 read back your last comment? Maybe it'll prompt you</p>	<p style="text-align: right;">Page 152</p> <p>1 A. The short position would have reflected a</p> <p>2 liability to the customer.</p> <p>3 Q. To purchase the shares?</p> <p>4 A. I did not show that.</p> <p>5 Q. Okay. Okay. And I just want to ask you one</p> <p>6 other thing, which is not related, except it came into</p> <p>7 my mind.</p> <p>8 A. Okay. Before you do that --</p> <p>9 Q. Oh, okay.</p> <p>10 A. -- I remembered what I was going to say.</p> <p>11 Q. Go ahead.</p> <p>12 A. Dubinsky states that -- well, he -- he -- he</p> <p>13 acknowledges that he -- he doesn't have records to</p> <p>14 prove this, but he infers in some language that</p> <p>15 because I did not on my focus reports --</p> <p>16 One of the -- one of the things that he --</p> <p>17 points he makes to demonstrate that I was -- he was</p> <p>18 trying to establish his theory, obviously, initiated</p> <p>19 by the trustee, that my fraud went back almost to the</p> <p>20 beginning of time.</p> <p>21 All right. That I didn't do any business,</p> <p>22 because I did not reflect any customer business on my</p> <p>23 financials -- on my focus reports. Customers that</p> <p>24 were -- you know, activity, long and shorts.</p> <p>25 So -- because he says that, you know, I</p>
<p style="text-align: right;">Page 151</p> <p>1 to --</p> <p>2 A. No.</p> <p>3 Q. -- to recall.</p> <p>4 A. No. I'll think of it. First of all, here</p> <p>5 is this. This is yours, and this is yours, I think.</p> <p>6 I have too much paperwork here.</p> <p>7 Q. I just want to go back -- back to this.</p> <p>8 Forgive me, but it intrigues me.</p> <p>9 So the entire portfolio that was purportedly</p> <p>10 owned by the investment advisory customers from 19 --</p> <p>11 from whenever it was in 1992 that you stopped buying</p> <p>12 the securities that showed up on the statements until</p> <p>13 2008, you had always honored withdrawals?</p> <p>14 A. Right.</p> <p>15 Q. You never defaulted in any of your</p> <p>16 obligations to the customers?</p> <p>17 A. Not until, you know, I went out of business.</p> <p>18 Q. Right. Okay. So the only violation of law</p> <p>19 that you understand you committed was not disclosing</p> <p>20 on your focus reports that you had sold short; is that</p> <p>21 right?</p> <p>22 A. Not that I had sold short. That I didn't --</p> <p>23 I did not reflect my liabilities. That was because of</p> <p>24 the short position.</p> <p>25 Q. Right.</p>	<p style="text-align: right;">Page 153</p> <p>1 mean, he -- he's saying he could have been doing</p> <p>2 business in -- for customers in the '80s or '70s or</p> <p>3 '60s, the '70s even, because my focus reports, which</p> <p>4 he doesn't have, by the way, because he doesn't -- he</p> <p>5 can't get that, but he's assuming that there was no</p> <p>6 customer, you know, business -- no customer positions</p> <p>7 shown on my focus reports.</p> <p>8 All right. But this is a common error made</p> <p>9 in -- by customers in general. I used to get calls</p> <p>10 from people that would say, listen, Merrill Lynch</p> <p>11 doesn't show, you know, my assets on a position.</p> <p>12 He's doing all of this business with -- with</p> <p>13 me or with all of these customers, and it doesn't show</p> <p>14 on Merrill Lynch's financial statements, you know, any</p> <p>15 of this business.</p> <p>16 I said, well, are you talking about his</p> <p>17 balance sheet? He says, yeah. I said, brokerage</p> <p>18 firms do not show customer assets fully paid for</p> <p>19 securities on their balance sheets. Otherwise,</p> <p>20 Merrill Lynch would have trillions and trillions of</p> <p>21 dollars.</p> <p>22 I said, you know, when a brokerage firm</p> <p>23 files a focus report or any balance sheet, when they</p> <p>24 send you, you know, they do not -- they do not show or</p> <p>25 record customers' fully paid for securities.</p>

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<p style="text-align: right;">Page 154</p> <p>1 So if a customer had a margin account or 2 a -- you know, a liability, he would have to show a 3 payable or a receivable from a customer. 4 But if a customer buys IBM, pays for the 5 IBM, and the brokerage firm has that IBM in his -- you 6 know, in his box or at the clearing corporation, that 7 doesn't appear on his records anywhere. So, you know, 8 as long -- if I was -- if I had a -- a liability, and 9 not from a short sale, because, you know, the short 10 sale -- the short sale, if it's a liability, would 11 appear on it, but if he was long and short, the 12 same -- it's another thing. 13 When you're trading in convertible 14 securities, you're -- you're allowed to net the -- the 15 receivable and payable for the same customer against 16 each other. So that stuff does not appear on a focus 17 report. 18 Now, that's a basic accounting. Anybody 19 that's a -- anybody that's familiar with any brokerage 20 firm accounting would know that question. So why he 21 would think there would be a -- that would be on my -- 22 on my balance sheet, it's not certain. 23 What would be on my balance sheet would be 24 if the customer owed me money, which is another thing. 25 There's a -- there's a major flaw. And this I have to</p>	<p style="text-align: right;">Page 156</p> <p>1 the things that created my whole problem. This 2 relates to them -- them not honoring their 3 commitments with me when -- and -- 4 Okay. This is on -- and I can't give 5 you -- this is my only copy, but you can find it. 6 It's on page 37 of the -- of the GAO report. 7 And I'm quoting now the General 8 Account -- Accounting Office. It says, "As part 9 of our review of the records provided by the 10 trustee, we noted some customer accounts having a 11 negative balance." 12 "For example, in the Picower case the 13 records showed a negative balance of 6.3 billion 14 dollars. In theory this reflected some kind of 15 margin account or debit balance." 16 "The trustee told us even though such 17 an account would not be in keeping with the 18 standard industry practice, such negative 19 balances raised the question of whether the 20 reported amounts represent a debt owed by the 21 customers to the Madoff firm." 22 Now, that clearly is a debt. All 23 right. Jeffry Picower owed me 6.3 billion 24 dollars. All right. The trustee -- I mean, the 25 GAO -- thank God. He questioned the trustee,</p>
<p style="text-align: right;">Page 155</p> <p>1 address, even though you didn't ask me about it. 2 The trustee somehow or other when I read the 3 GAO report -- and I actually spoke to the treasury 4 secretary -- the inspector general of the treasury 5 department about this. 6 In the -- in the -- in the GAO report, 7 issued by the government, which is a report that he 8 issues from the general accounting -- accountability 9 office, based upon the trustee's report, there's a -- 10 I have a -- this is something that -- David, 11 you might ask Irving Picard how he had managed to get 12 this thing slipped through. 13 Jeffry Picower -- 14 MR. GOLDMAN: Tell us what you're 15 looking at, Bernie. 16 THE WITNESS: Oh, this is the GA -- a 17 copy -- part of the G -- the SIPC report, the GAO 18 report, which is -- took seven years to -- to 19 finally get, which my attorneys assured me was 20 going to be done immediately. It took seven 21 years to finally get them to do the results of -- 22 of the trustee's report. 23 There's a 6.3 billion dollar liability 24 to the debit balance in Jeffrey Picower's 25 account, which was a -- a major issue was one of</p>	<p style="text-align: right;">Page 157</p> <p>1 what about the 6.3 billion dollars? 2 And for some reason the trustee 3 claimed, well, we can ignore that, you know. 4 That's not typical. 5 All right. Now, if you look at my 6 records or any brokerage firm's records or 7 account agreements with customers, it clearly 8 states that, you know, they're responsible for 9 any debit balances or margin accounts that they 10 have with the firm. 11 It says here on my trading 12 authorization, which clients sign, it says, "The 13 undersigned hereby agrees to indemnify and hold 14 you harmless from and to pay you promptly on 15 demand any and all losses arising thereof or 16 debit balance due hereon." 17 In other words, every customer that 18 opens a margin account or has any debt with a 19 brokerage firm owes them that money. All right. 20 MS. CHAITMAN: Okay. Can I just 21 mark -- okay. I'm going to mark as Exhibit 12 -- 22 can I take that? Is that one document, the one 23 you just read from? 24 THE WITNESS: Yeah. 25 MS. CHAITMAN: Okay. So I'm marking as</p>

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